August 2012 Gulf Coast Business Immigration Newsletter

Please find below a copy of the August Business Immigration Newsletter published by the Gulf Coast Immigration Law Center (GCILC). The August 2012 Gulf Coast Business Immigration Newsletter includes:

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If you have questions about the August Newsletter, please contact Sujin Kim, Esq. at (251)379-8065/(251) 387-2544 or skim@gulfcoastimmigrationlawcenter.us

Immigration is one of the most complex and dynamic areas of law and policy affecting America's social and economic composition. A well-functioning immigration system is critical to America remaining strong and vibrant. To contribute to this goal and to meet the growing needs for comprehensive and sophisticated legal services in all aspects of business immigration-related matters in Northwest Florida, South Alabama and Mississippi, the GCILC has been issuing monthly immigration newsletters/updates, quarterly business immigration newsletters, and immigration alerts to announce fast-breaking developments. The GCILC offers guidance, advice, counsel and representation to business and individual clients in matters of immigrant (both employment- and family- based) and nonimmigrant working visa petitions and applications, with a subspecialty focusing on the U.S. Immigration Investor Program (EB-5 Program) and foreign investments under the U.S.-Korea Free Trade Agreement. The GCILC also conducts educational lectures/seminars and training for U.S. based academic institutions and businesses on information and developments in the U.S. immigration system, including I-9 Compliance, E-Verify, the EB-5 Program, and Global immigration laws. For further information about GCILC, publications and lectures and seminars, contact us at info@gulfcoastimmigrationlawcenter.us or visit www.gulfcoastimmigrationlawcenter.us

Sincerely,
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If you do not want to receive emails from the Gulf Coast Immigration Law Center in the future, please let us know by writing to us at info@gulfcoastimmigrationlawcenter.us

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Deferred Action for 800,000 DREAMers_USCIS Accepting Requests on August 15, 2012

On June 15, 2012, the Secretary of the Department of Homeland Security (DHS) announced that certain people who came to the United States as children and meet certain criteria could request consideration for deferred action for a period of two years, subject to renewal, and would then be eligible for work authorization. In accordance with the Secretary's memorandum, the U.S. Citizenship and Immigration Services (USCIS) will begin accepting requests for consideration for deferred action for childhood arrivals on **August 15, 2012**. DHS will, in the exercise of its prosecutorial discretion, consider granting deferred action to individuals who:

1. Came to the United States before reaching their16th birthday;
2. Have continuously resided in the U.S. for at least five years preceding June 15, 2012 (i.e., since, or before, June 15, 2007, up to the present time);
3. Were physically present in the United States on June 15, 2012, and at the time of making the request for consideration of deferred action with USCIS;
4. Entered without inspection before June 15, 2012, or your lawful immigration status expired as of June 15, 2012;
5. Are currently in school, have graduated/obtained a certificate of completion from high school, have obtained a GED, or are an honorably discharged veteran of the Coast Guard or U.S. Armed Forces;
6. Have not been convicted of a felony, a significant misdemeanor, or multiple (three or more other) misdemeanors, and do not otherwise pose a threat to national security or public safety; and
7. Are under the age of 31 as of June 15, 2012.

Beginning August 15, 2012, a request for consideration of Deferred Action will be required to be submitted to USCIS using a specific form, along with a form requesting an employment authorization document. The form is still being developed and will be available on the USCIS website on August 15, 2012. The total fees will be $465.

All individuals meeting the requirements, including those in removal proceedings, with a final removal order, or with a voluntary departure order, will affirmatively request consideration of Deferred Action from USCIS through this process as well. DHS has taken immediate action in the following cases since the June 15 announcement:

- Individuals who have been identified through the ongoing prosecutorial discretion case review process announced on November 17, 2011; and
- Individuals who are encountered by Immigration and Customs Enforcement (ICE) or Customs and Border Protection (CBP).

ICE has reviewed Deferred Action requests on a case-by-case basis while there was no formal petition or application for Deferred Action. Relevant consideration included sympathetic facts and ICE enforcement priorities. Please note there is no judicial review of the decision concerning deferred action. ICE has also joined motions to reopen in cases where the young person is eligible for Deferred

Action under the June 15, 2012 DHS memorandum, and has a voluntary departure order that has not yet expired.

Note that Deferred action is NOT an immigration benefit and does not confer any lawful immigration status. It may be terminated at any time if the circumstances of the case no longer warrant deferred action. Any departure from the U.S. while under Deferred Action, with or without permission from DHS, may result in inadmissibility to the US. Granting Deferred Action doesn't entitle re-admittance or parole back into the U.S.

What is DEFERRED Action? And how is it Different from The DREAM Act? Why it matters to our Economy?

On June 15, 2012, President Barack Obama announced that his administration would stop deporting young undocumented immigrants between the ages of 15-31 who meet certain criteria previously proposed under the DREAM ACT. The USCIS is scheduled to establish an application procedure for this program, called Deferred Action, on or before August 15 2012. For those not familiar with the immigration process, questions may arise regarding the Deferred Action program and how it differs from the proposed legislation commonly referred to as the DREAM Act.

According to recent estimates, the current immigration system has led to as many as 10-11 million undocumented immigrants residing in the United States. Two to three million among them are children. Most of these children were brought to the U.S. at a young age through no choice of their own, have been educated in American schools, and consider the U.S. their only home. Although these children have legal access to K-12 education (*Plyler v. Doe* , 457 U.S. 202 (1982)), they are left with no opportunity to attend institutions of higher education or to serve in the military and live in fear of deportation to a country they no longer remember. Due to the undocumented status of their parents, they have no available avenues for family-based visa sponsorship and, further, due to their age and lack of work experience, a work visa also may not available.

To address the plight of these undocumented young people meeting certain requirements, and to provide them an opportunity to earn their legal status, the Development, Relief and Education of Alien Minors (DREAM) Act was first introduced in the Senate in August 2001 and re-introduced in both chambers of Congress in September 2010 (S. 729/H.R. 1751). The bipartisan bill failed to get the 60-votes necessary to end debate on the Senate floor in December 2010. The DREAM Act was re-introduced in May 2011. Basically, the DREAM Act would allow these young people to "get in line like everyone else" to legalize their immigration status. The young students who would benefit under the DREAM Act have been raised and educated in the U.S. Allowing them to pursue higher education is an investment in the future of the U.S. and its economy. In the current globalized world, their multilingual and bicultural skills will contribute to the success and global competitiveness of the United States.

Deferred Action does not grant permanent legal status or citizenship but rather provides, as a matter of prosecutorial discretion, for qualifying young people to avoid deportation for a period of two years, subject to renewal. To summarize the program briefly, Deferred Action is available to: 1) those in removal proceedings and 2) those who apply affirmatively. To be eligible, the applicant must be between the ages of 15 and 31; present in the U.S. on June 15, 2012; and have arrived in the U.S.

before the age of 16 and resided continuously here for at least five years. Additionally, the applicant currently must be in school, graduated or have a GED, or honorably discharged from the U.S. Coast Guard or Armed Forces; and must not have been convicted of a felony, a significant misdemeanor, multiple minor misdemeanors or otherwise pose a threat to national security or public safety. Persons who are eligible to receive Deferred Action also will be eligible to apply for work authorization. Family members who do not independently qualify will not receive Deferred Action pursuant to this process.

ICE Prosecutorial Discretion Program_Update

As of June 28, 2012, a total of 5,684 cases were closed under a special ICE program announced in August 2011. The stated goal of the program is to reduce the massive backlog of pending matters in the Immigration Courts by identifying those that could be dismissed or put on hold through the exercise of prosecutorial discretion (PD). The number of PD closures was up from 4,585 cases closed as of the end of May; however, it still amounted to only 1.9 percent of the 298,173 cases that had been pending before the Immigration Courts as of the end of last September.

In August 2011, DHS announced that it would exercise prosecutorial discretion for low-priority cases in order to ensure that resources are used wisely, and that humanitarian factors are considered when enforcing our immigration laws. In the immigration context, federal authorities have historically exercised their discretion by declining to arrest immigrants who do not meet the federal government's enforcement priorities; declining to pursue a case or cancelling the charges against immigrants who may be removable; declining to oppose an application for relief that would allow an immigrant to remain in the country; or deferring the removal of an immigrant with a formal order of deportation. Prosecutorial discretion is the authority of an agency or officer to decide what charges to bring and how to pursue each case.

Employment-Based Immigrant Visa

Current immigration policy has a cap of 140,000 employment-based (EB) immigrant visas, which are divided into five preference categories (EB-1, EB-2, EB-3, EB-4, and EB-5). EB Visas are for priority workers, professionals holding advanced degrees or persons of exceptional ability, skilled workers, special immigrants, and employment creating investors. Spouses and children accompanying the workers count toward the cap. As in the family-based immigration system, significant backlogs exist in the employment-based green card system.

EB-5 Visa Usage for FY2012

On July 11, 2012, Charlie Oppenheim, Chief of Visa Control at the State Department, provided the FY2012 Employment-Based Fifth preference issuance totals for the top five countries (89%), for the period October through June. He expects that the FY2012 EB-5 visa usage will be approximately 6,200.

The EB-5 Visa was created when the U.S. Congress enacted the Immigration and Nationality Act 1990 ("Immigration Act of 1990") to establish the fifth employment-based preference category to attract entrepreneurial immigrants to the United States who would help stimulate the U.S. economy by investing the required capital in the U.S. and creating jobs for U.S. workers in the process. Congress allocated approximately 10,000 EB-5 visas annually. Qualified foreign investors must: 1) create a new commercial enterprise and actually have invested, or be in the process of investing at least $1 million, (or at least $500,000 if the investment were made in a "targeted employment area"[6] and, as a result, would create the required numbers of jobs); 2) benefit the U.S. economy through *directly* creating at least ten full-time jobs or save at least ten jobs in a "troubled business" for qualified U.S. workers. Once alien entrepreneurs satisfy these requirements and prove the completion of the requirements, they can then apply for lawful permanent resident status.

Enforcement of Immigration Law_E-VERIFY

The Immigration and Nationality Act prohibits the hiring of individuals who are not authorized to work in the United States. It requires employers to check the immigration status of an employee and make sure that the identification document submitted by the employee "reasonably appears on its face to be genuine."

E-Verify is an electronic verification program that enables employers to verify eligibility for employment in the United States and operated by USCIS, in conjunction with the Social Security Administration (SSA) which is to provide employers with an accurate and easy way to determine employment eligibility. Through E-Verify, the Social Security numbers and alien identification numbers of new hires are checked against SSA and DHS databases in order to help employers determine who is eligible to work in the U.S. E-Verify verifies the employment authorization of new hires based on information provided on the Form I-9. Employers use E-Verify for all new hires (both U.S. citizens and non-citizens); however, it cannot be used to verify current employees unless the employer is required to use E-Verify for current employees based on a federal contract containing a Federal Acquisition Regulation (FAR) clause. More than 387,000 employers use the E-Verify system, according to USCIS data. Although improvements have been made to E-Verify over the years, a 2010 Government Accountability Office report found that persistent errors can surface from misspellings or slight mismatches of names on E-Verify documents and in its database, creating problems for thousands of workers.

Alabama, Arizona, Georgia, Mississippi, North Carolina, and South Carolina require almost all employers to use E-Verify. Pennsylvania, starting in January 2013, is requiring employers in construction public works projects to use E-verify. Penalties for failing to provide verification range from $250 to $1,000.

Filing Deadlines for OPT Applications

Optional Practical Training (OPT) is temporary employment that is directly related to an F-1 student's major area of study. Under the prior rules, an F-1 student could be authorized to receive up to a total of 12 months of practical training either before (pre-) and/or after (post-) completion of studies.

There are several deadlines to consider in handling an OPT application. Pursuant to 8 C.F.R. § 214.2(f)(11)(i)(B)(2) "[f]or post-completion OPT, the student must properly file his or her Form I-765 up to 90 days prior to his or her program end-date and no later than 60 days after his or her program end-date. The student must also file the Form I-765 with USCIS within 30 days of the date the Designated School Official (DSO) enters the recommendation of OPT into his or her Student and Exchange Visitor Information System (SEVIS) record".

In the past, when USCIS received an OPT application more than 30 days after the DSO entered the OPT recommendation in SEVIS, it would often send the applicant a Request for Evidence requiring a new Form I-20 signed by the DSO. The DSO could simply reprint the Form I-20 from SEVIS without entering a new OPT recommendation in SEVIS and sign it, and the student could submit it to USCIS. USCIS has announced that failure to timely file within 30 days of the date the DSO enters the recommendation for OPT will result in a denial of the application.

FY2012 H-2B Cap Count

Cap Type	Cap Amount	Beneficiaries Approved	Beneficiaries Pending	Target Beneficiaries	Total	Date of Last Count
H-2B: 2nd Half FY 2012	33,000	27,218	1,464	51,000	28,682	7/27/2012
H-2B: 1st Half FY 2013	33,000	456	330		786	7/27/2012

As of 7/27/12, USCIS receipted 28,682 beneficiaries toward the 33,000 H-2B cap amount for the second half of the fiscal year. This count includes 27,218 approved and 1,464 pending beneficiaries. H-2B cap count information for the first half of FY2013 also is available.

The H-2B non-agricultural temporary worker program allows U.S. employers to bring foreign nationals to the United States to fill temporary non-agricultural jobs.

USSC Case on Immigration and Nationality Act

On June 13, 2011, the Supreme Court affirmed the decision of the U.S. Court of Appeals for the Ninth Circuit upholding provisions of the Immigration and Nationality Act, as amended ("INA") that prescribe the eligibility requirements for U.S. citizens to transmit citizenship to their children born out of wedlock outside the United States. *Flores-Villar v. United States*, 130 S.Ct. 1878 (2011). By a vote of four to four (Justice Kagan was recused), the Supreme Court allowed the Ninth Circuit's decision to stand without issuing an opinion. The Ninth Circuit's decision rejected a constitutional challenge to provisions of the INA on equal protection grounds based on the longer requirement for presence in the United States for a U.S.-citizen father than for a U.S.-citizen mother to transmit U.S. citizenship to a child.

Immigration Rules You Might Be Subject to (4)_Immigration/Non-immigrant Waiver

In some instances foreign nationals who have someone to sponsor them for a green card, or who may have a legitimate reason to come for a visit, may have certain aspects of their background that may require them to obtain an immigration or non-immigrant waiver before being granted the immigration or non-immigrant benefit that they desire.

If a person is inadmissible to the United States, their visa application will be denied. However, certain of these inadmissibility grounds can be waived by an immigration officer. Since an immigrant visa applicant or nonimmigrant visa applicant can be denied for several reasons, there are many different types of immigration waivers.

Depending on whether the person is trying to move permanently to the US or just coming to visit or work for a short time, the ground of inadmissibility for the visa denial (prior immigration violation, criminal history, medical issues, prior deportation, etc.) will determine which type of immigrant waiver or nonimmigrant waiver must be filed:

- 601 waiver for an intending immigrant
- 212(d)(3) waiver for a non-immigrant (temporary worker or visitor)
- Deportation Waiver
- J1 Waiver

USCIS Centralized Filing for Waivers of Inadmissibility

Since June 4, 2012, individuals outside the U.S. who have been found inadmissible for certain visas by a U.S. consular officer and who seek to waive an inadmissibility ground should file requests directly with USCIS by mailing the application to a USCIS Lockbox facility in the United States. This change only affects situations where individuals outside the U.S., who have been found inadmissible for an immigrant visa or a nonimmigrant K or V visa, must file their waiver applications. These waiver applications are adjudicated at the USCIS Nebraska Service Center (NSC). Individuals in Mexico who seek to file a waiver application continue to have the option to file with the local USCIS Field Office in Ciudad Juarez, Mexico, in addition to the Lockbox, during a transition period until December 4, 2012.

Global Entry Expands to San Diego Airport

Global Entry is a U.S. Customs and Border Protection (CBP) program that allows expedited clearance for pre-approved, low-risk travelers upon arrival in the United States. Though intended for frequent international travelers, there is no minimum number of trips necessary to qualify for the program. Participants may enter the United States by using automated kiosks located at select airports

Participants in Global Entry bypass the regular passport control line and proceed directly to the Global Entry kiosk. At the kiosk, Global Entry travelers will activate the system by inserting their passports or U.S. permanent resident cards into a document reader. The kiosk will direct travelers to provide digital fingerprints and will compare that biometric data with the fingerprints on file.

Applicants submit a non-refundable $100 application fee and provide information for CBP use in background vetting. Applicants also complete an interview with a CBP officer, and provide fingerprints and a photo. Upon approval, membership lasts for five years. Global Entry is open to U.S. citizens and legal permanent residents, and is also available to citizens of the Netherlands who are enrolled in Privium, Canadian NEXUS members and Korean SES members. Global Entry is also available to Mexican nationals.

CPB is the unified border agency within DHS charged with the management, control and protection of our nation's borders at and between official ports of entry. CBP is charged with keeping terrorists and terrorist weapons out of the country while enforcing hundreds of U.S. laws

Free trade agreements with Panama, Colombia, and Korea

On October 21, 2011, President Obama signed legislation implementing the Panama, Colombia, and Korea free trade agreements. Pub. L. Nos. 112-43, 112-42, and 112-41. United States government officials are still working with representatives of the governments of Panama, Colombia, and Korea on steps necessary for entry into force of the agreements.

Visa Agreement between the United States and Russia

Pursuant to the agreement of July 2011 between U.S. and Russia, the Department of State (DOS) has issued nonimmigrant business, tourist, private, and humanitarian visas to the Russian Federation, and for business and tourist visas to the United States, as well as short-term official travel visas to both counties.

Civics Questions and Answers for the Naturalization Test

USCIS online resource offers the 100 civics test questions and answers for the naturalization test in English, Arabic, Chinese, Korean, Spanish, Tagalog, and Vietnamese

August 2012 Visa Bulletin

DOS has released its August 2012 Visa Bulletin. The Visa Bulletin sets out per country priority date cutoffs that regulate the flow of adjustment of status (AOS) and consular immigrant visa applications. Foreign nationals may file applications to adjust their status to that of permanent resident, or to obtain approval of an immigrant visa application at an American embassy or consulate abroad, provided that their priority dates are prior to the cutoff dates specified by the DOS.

Priority date cutoffs are assessed on a monthly basis by the DOS, based on anticipated demand. Cutoff dates can move forward or backward, or remain static and unchanged. Employers and employees should take the immigrant visa backlogs into account in their long-term planning, and take measures to mitigate their effects.

FAMILY SPONSORED CATEGORIES					
Family-Sponsored	**All Chargeability Areas Except Those Listed**	**CHINA-mainland born**	**INDIA**	**MEXICO**	**PHILIPPINES**
F1	01AUG05	01AUG05	01AUG05	08JUNE 93	01MAR94
F2A	15MAR10	15MAR10	15MAR10	01MAR10	15MAR10
F2B	22JUN04	22JUN04	22JUN04	22AUG92	01JAN02
F3	01MAY02	01MAY02	01MAY02	22JAN93	22JUL92
F4	15FEB01	08JAN01	15FEB01	15JUN96	01FEB89

First (F1): Unmarried Sons and Daughters of U.S. 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, plus any unused first preference numbers:
A. (F2A) Spouses and Children of Permanent Residents: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;
B. (F2B) Unmarried Sons and Daughters (21 years of age or older) of Permanent Residents: 23% of the overall second preference limitation.
Third (F3): Married Sons and Daughters of U.S. Citizens: 23,400, plus any numbers not required by first and second preferences.
Fourth (F4): Brothers and Sisters of Adult U.S. Citizens: 65,000, plus any numbers not required by first three preferences.

EMPLOYMENT BASED CATEGORIES					
Employment- Based	**All Chargeability Areas Except Those Listed**	**CHINA- mainland born**	**INDIA**	**MEXICO**	**PHILIPPINES**
1st	C	C	C	C	C
2nd	01JAN09	U*	U*	01JAN09	01JAN09
3rd	08SEP06	08NOV05	01OCT02	08SEP06	15JUN06
Other Workers	08SEP06	15JUN03	01OCT02	08SEP06	08JUN06
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5th Targeted Employment Areas/ Regional Centers and Pilot Programs	C	C	C	C	C

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.

*Continued heavy demand for numbers in the Employment Second preference category has required the establishment of a worldwide cut-off date for the month of August. This action has been taken in an effort to hold number use within the annual numerical limit. Should there be an increase in the current demand pattern, it may be necessary to make this category completely "unavailable" prior to September 30, 2012. The China and India Employment Second preference categories are already "unavailable" and will remain so for the remainder of the fiscal year.

Click here for August 2012 Visa Bulletin in its entirety.

Immigration Processing Times

USCIS Service Center & District Office processing times online: Click here
Nonimmigrant Visa Waiting Times: Click here
Department of Labor processing times and information on backlogs: Click here

Public Broadcasting Service (PBS) Documentary on Immigration in America

Homeland: Immigration in America is a three-hour documentary series that explores one of the most polarizing issues facing America today. Click here to view.

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