

GCILC Immigration Newsletter_ February 2012

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

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To meet the growing needs for comprehensive and sophisticated legal services in all aspects of immigration law 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 in immigration law. The GCILC offers guidance, advice, counsel and representation to individual and business 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,

Sujin Kim, Esq.

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

E-Verify Expansion: Self Check

On February 9, the U.S. Citizenship and Immigration Services (USCIS) announced that Self Check, a free online service of E-Verify, is available in all 50 states. Self Check, which allows workers to check their own employment eligibility status as well as guidance on how to correct their records of the Department of Homeland Security (DHS) and the Social Security Administration (SSA). Under the anti-discrimination provision of the Immigration and Nationality Act (INA), employers may not require a job applicant to use Self Check as such a practice would likely constitute a prohibited "pre-screening" practice.

VIBE database – New Online Process

USCIS's Validation Instrument for Business Enterprises (VIBE) program, a new streamlined online process, has been launched for certain USCIS petitioners and other U.S. government customers seeking to submit information about their organizations into VIBE's database. VIBE is a Web-based adjudication tool used by USCIS to validate basic information about companies or organizations petitioning to employ certain foreign national workers in determining petitioners' eligibility. VIBE includes most employment-based petitions filed by companies and organizations, including the Petition for a Nonimmigrant Worker, Immigration Petition for Alien Worker, and Petition for Amerasian, Widow(er) or Special Immigrant.

New H-2B Rule Effective Apr. 23, 2012

The U.S. Department of Labor's Employment and Training Administration will publish the new final rule concerning the H-2B temporary nonagricultural worker program in the Feb. 21 edition of the *Federal Register*. The changes are made to several aspects of the program, which include creating a nationwide electronic registry where employers must post all jobs and ending a labor market certification process to ensure that U.S. workers receive greater access to jobs and strengthens worker protections. Click [here](#) for the final rule

The H-2B program allows the entry of foreign national workers into the United States on a temporary basis when qualified U.S. workers are not available, and the employment of those foreign workers will not adversely affect the wages and working conditions of U.S. workers. The H-2B program has long been used by many kinds of seasonal, mostly small, businesses, including seafood fishermen and processors, amusement parks and hotels and landscapers. The H-2B program is limited by law to a cap of 66,000 visas per year.

Fiscal Year 2012 H-2B Cap Count

As of 2/10/2012, USCIS reports that they have receipted 34,481 petitions toward the 33,000 H2B cap amount for the first half of the 2012 fiscal year. The below chart is regularly updated as USCIS receives H-2B petitions for fiscal year 2012.

| Cap Type | Cap Amount | Beneficiaries Approved | Beneficiaries Pending | Target Beneficiaries | Total | Date of Last Count |
|----------------|------------|------------------------|-----------------------|----------------------|--------|--------------------|
| H-2B: 1st Half | 33,000 | 26,257 | 8,224 | 45,000 | 34,481 | 2/10/2012 |
| H-2B: 2nd Half | 33,000 | 4,730 | 2,103 | | 6,833 | 2/10/2012 |

EB-5 Investor Program and "tenant-occupancy" methodology

USCIS is now in the process of adjudicating certain pending I-924 Applications for Regional Centers under the Immigrant Investor Pilot Program that are supported by the "tenant-occupancy" economic methodology. The "tenant-occupancy" methodology is to seek credit for job creation by independent tenant businesses that lease space in buildings developed with EB-5 capital. USCIS recognizes that whether it is economically reasonable to attribute such "tenant-occupancy" jobs to the underlying EB-5 commercial real estate project is a fact-specific question and each case filed will depend on the specific facts presented and the accompanying economic analysis.

The EB-5 immigrant investor program was created by Congress in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign national investors. Approximately 10,000 visas each year are allocated for qualified foreign investors and their families. According to the testimony of witnesses in a 2011 Senate Judiciary Committee Hearing, if the full number of visas allocated to the program is used, based on investment and job creation requirements, the program "has the potential to create or preserve 100,000 jobs per year, with contributions of \$5 billion in foreign capital investment. And these benefits come at no cost to American taxpayers." In June of 2011, USCIS estimated that the EB-5 program has resulted in more than \$1.5 billion in capital investments and created at least 34,000 U.S. jobs. USCIS issued 3,463 EB-5 visas in 2011 and estimated 2,364 EB-5 in the first quarter of 2012.

Prosecutorial Discretion & Deportation Update

ICE Pilot Program:

Per the proposed "prosecutorial discretion" policy in 2011, the Immigration and Customs Enforcement (ICE), the investigative arm of DHS conducted pilot programs from early December until mid-January in Denver and Baltimore. The ICE attorneys reviewed 7,800 pending removal cases and determined that 1,300 should be administratively closed.

TRAC Report:

According to Transactional Records Access Clearinghouse (TRAC) at Syracuse University, immigration court judges are rejecting a large and growing number of cases where ICE has sought to deport people from the United States. During the last three months of FY 2010, the rejection rate was nearly one out of three (31%) which is increased from one out of every four (25%) just 12 months earlier. Courts in some parts of the country are now rejecting over half of ICE's requests. TRAC also found no evidence showing that ICE emphasis has shifted yet to deporting serious convicted criminals under the new prosecutorial discretion policy. The American Immigration Lawyers Association's November 2011 survey also shows that ICE's 28 offices were applying the new guidelines in varying degrees, causing confusion for immigrants, their attorneys and even prosecutors handling the cases and that many of the offices weren't using the guidelines at all. There are as many as 1.6 million deportation cases in the court system.

Deportation & Grounds of Inadmissibility: Criminal Conviction

To be admitted to the United States, either as a nonimmigrant or an immigrant, a foreign national must be admissible under the INA. Foreign nationals who have been convicted of, or who admit to having committed, or who admit to committing acts which constitute the essential elements of a crime involving moral turpitude, other than purely political offenses are inadmissible under INA §212(a)(2)(A)(i)(I). The

moral turpitude provision of INA “refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one’s fellow man or society in general.” See Matter of Flores , 17 I&N Dec. 225 (BIA 1980).

According to the 2010 DHS Immigration Enforcement Action annual report, DHS removed 397,000 foreign nationals from the United States. The total includes more than 216,700 people convicted of felonies and misdemeanors, and 169,000 known criminal aliens. A 2011 report by the U.S. Government Accountability Office found that the number of criminal aliens in U.S. federal prisons in 2010 was estimated to be 55,000, a 7% increase since 2005 (The general U.S. federal prison population rose 14% over the same time). States with more than 10,000 criminal alien incarcerations are California, Arizona, Texas, Florida, Illinois and New York. 74% of total incarcerations took place in California, Arizona and Texas.

Alabama Immigration Law, HB 56 Update

University of Alabama Economist’s Report

Dr. Samuel Addy, an economist and director of the Center for Business & Economic Research at the University of Alabama, said that the HB 56 will annually shrink Alabama’s economy by at least \$2.3 to \$10.8 billion for every year the law is in effect and will cost \$56.7 million to \$264.5 million in tax revenue. According to his study, most of the damage will come from reduced demand for goods and services provided by Alabama businesses patronized by immigrants. Since Alabama enacted H.B. 56 on June 9, 2011, employers in agriculture, construction, food service, and hospitality are struggling to fill hard, dirty, low-paying jobs that immigrants once performed.

"Is This Alabama?" - Camera on Alabama

Chris Weitz, Director of A Better Life, Jose Antonio Vargas, Pulitzer Prize-winning undocumented journalist who has spent a considerable amount of time in Alabama, and Tom Baxter, columnist at the SaportaReport discuss the impacts on the fabric of Alabama’s society and economy. Click [here](#) to see the panel discussion

March 2012 Visa Bulletin

The Department of State (DOS) has released its March 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 | 01FEB05 | 01FEB05 | 01FEB05 | 01MAY93 | 22JUN97 |
| F2A | 22JUL09 | 22JUL09 | 22JUL09 | 01JUL09 | 22JUL09 |

| | | | | | |
|-----|---------|---------|---------|---------|---------|
| F2B | 15NOV03 | 15NOV03 | 15NOV03 | 01DEC92 | 08DEC01 |
| F3 | 01JAN02 | 01JAN02 | 01JAN02 | 08JAN93 | 22JUL92 |
| F4 | 08OCT00 | 08OCT00 | 08OCT00 | 22MAY96 | 22DEC88 |

*NOTE: For March, F2A numbers **EXEMPT from per-count**

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 | C | 01MAY10 | 01MAY10 | C | C |
| 3rd | 15MAR06 | 01JAN05 | 22AUG02 | 15MAR06 | 15MAR06 |
| Other Workers | 15MAR06 | 22APR03 | 22AUG02 | 15MAR06 | 15MAR06 |
| 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 |

*Employment Third Preference Other Workers Category: Section 203(e) of the

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.

[Click here](#) for March 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](#)

Gulf Coast Immigration Law Center
P.O. Box 2262
Mobile, Alabama 36652
(251) 379-8065
(251) 219-7182 FAX
info@gulfcoastimmigrationlawcenter.us

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