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- **'Fairness for High-Skilled Immigrants Act' Bill Heads to House Floor for Consideration**

Rep. Jason Chaffetz (R-Utah) introduced the "Fairness for High-Skilled Immigrants Act" (H.R. 3012). The bill would eliminate the per-country numerical limitation for employment-based immigrants over three years and increase it for family-based immigrants, from 7 percent per country to 15 percent per country. Rep. Chaffetz said, "By removing per-country limits, American companies will be able to access the best talent." He noted that the current percentage cap "has created a backlog of qualified workers."

Co-sponsors of the bill include Reps. Tim Griffin (R-Ariz.), Zoe Lofgren (D-Cal.), and Lamar Smith (R-Tex.). It is supported by the U.S. Chamber of Commerce; Compete America, a coalition of high-tech companies including Microsoft, Google, and Oracle; various trade groups including the Business Software Alliance, the Semiconductor Industry Association, and the Information Technology Industry Council; and Immigration Voice, a leading coalition of highly skilled foreign professionals.

- **Alabama Immigration Law Update and Enforcement**

On November 23, 2011, the federal district court in Montgomery temporarily blocked section 30 of Alabama anti-immigrant law HB 56. In a 10-page opinion, following a five-hour hearing, Judge Myron Thompson found that the section was pre-empted by federal immigration law. Section 30 provides that any person entering into a business transaction (or attempting) with the state or political subdivision is required to show US citizenship or lawful presence through SAVE or US-DHS. "Business transaction" includes but is not limited to: vehicle tag, drivers' license or nondriver identification card, or applying for a business license. The Act excludes marriage licenses. Violation is a Class C Felony.

The ruling on the injunction motion in the larger civil rights coalition suit challenging HB 56 is currently before the 11th Circuit of the U.S. Court of Appeals. A hearing to appeal a lower court's decision to allow several provisions of the law to go into effect has been set for March 1, 2012.

Authorities from the Alabama city of Tuscaloosa have dismissed a charge against a Mercedes-Benz executive who had traveled there from Germany on business and was arrested under Alabama's new crackdown on illegal immigration after a police officer caught him driving without identification required by the law.

Alabama's initial estimate is \$40 million lost due to its controversial hard-line immigration law. Sam Addy, an economist at the University of Alabama, said that figure likely understates the damage.

- **DOL Updates on Prevailing Wage Determinations** (October 2011 GCILC Immigration Newsletter)

The Department of Labor's Office of Foreign Labor Certification announced its target dates for becoming "current" on prevailing wage determinations:

PERM: Week of October 23, 2011

H-1B: Week of November 6, 2011

H-2B: Week of December 18, 2011

I-9 COMPLIANCE

- **Justice Dept. Sues California Healthcare Provider for Discrimination**

The Department of Justice (DOJ) filed a lawsuit against Generations Healthcare, a provider with skilled nursing facilities throughout California, alleging that it engaged in a pattern or practice of discrimination by imposing unnecessary documentary requirements on naturalized U.S. citizens and non-U.S. citizens to work in the U.S. The DOJ's investigation found that the company demanded that a work-authorized applicant produce a permanent resident card, "green card." The applicant did not have a green card and instead presented an employment authorization document. The company rejected her valid documentation because it had a future expiration date and told her that it could not hire her to work at its St. Francis Pavilion facility unless she presented a green card. As a result, the applicant was unable to obtain employment with the company.

"Employers are not allowed to impose more burdensome employment eligibility verification procedures on certain workers based on their citizenship status," noted Thomas E. Perez, Assistant Attorney General for the Civil Rights Division.

- **ICE employment compliance program**

Seven major employers in the U.S. including Best Western International, Chick-fil-A, Inc., Hyatt, Kelly Services, Lexmark, Smoothie King and Toyota Motor Engineering and Manufacturing North America have agreed to partner with U.S. Immigration and Customs Enforcement (ICE) by joining the agency's employment compliance program IMAGE, or "ICE Mutual Agreement between Government and Employers." IMAGE is designed to promote voluntary compliance and helps companies ensure they are maintaining a lawful workforce. The IMAGE program is part of ICE's overall worksite enforcement strategy, which targets employers who knowingly hire illegal labor. In FY 2011, ICE:

- Conducted 2,496 I-9 audits, up from 503 in FY 2008.
- Initiated 3,291 worksite enforcement cases, up from 1,191 in FY 2008.
- Criminally arrested 221 employers, up from 135 in FY 2008.
- Issued 385 Final Orders for \$10,463,987 in fines, up from 18 Final Orders for \$675,209 in fines in FY 2008.
- Debarred 115 individuals and 97 businesses, compared to 0 individuals and 0 businesses in FY 2008.

- **ICE Announces Record Increase in Worksite Enforcement Activity** (October 2011 GCILC Immigration Newsletter)

As of September 17, 2011, ICE instituted 3,015 administrative/criminal investigations—a 54% increase over the FY2008 numbers. In FY2010, ICE arrested and criminally prosecuted 196 owners, HR managers, and executives—a 45% increase over FY2008.

In FY2011, ICE issued a record 2,393 Notices of Inspection (for federal Forms I-9 and supporting documents), a more than 375% increase from the number issued in FY2008. This year, ICE issued 331 final administrative fine orders totaling more than \$9M in fines levied on employers compared to 18 final orders issued totaling \$675k in FY2008. In addition, FY2010 worksite investigations resulted in a record \$36.6M in judicial fines, forfeitures, and restitution.

E-VERIFY

- **USCIS Redesign of the Employment Authorization Document and Citizenship Certificate** (October 2011 GCILC Immigration Newsletter)

On October 25, 2011, the U. S. Citizenship and Immigration Services (USCIS) launched an enhanced Employment Authorization Document (EAD) and a redesigned Certificate of Citizenship with new features to enhance security and deter fraud. This state-of-the-art technology incorporated into the new documents will deter counterfeiting, obstruct tampering, and facilitate quick and accurate authentication. The agency anticipates that more than 1 million people will receive the new documents over the next year.

- **E-Verify** (September 2011 GCILC Immigration Newsletter)

E-Verify is an immigration enforcement tool. It is the federal government's Internet-based system that allows employers to check whether prospective employees are legally authorized to work in the United States. Currently, only 4 percent of all American businesses use the system, but House Judiciary Chairman Lamar Smith (R-TX) has introduced the Legal Workforce Act of 2011, H.R. 2164, to make E-Verify mandatory for all employers across the country. [Click here for H.R. 2164.](#)

NON-IMMIGRANT WORKERS

- **H1B cap reached for FY 2012**

On November 22, 2011, USCIS received a sufficient number of petitions to reach the statutory cap for FY 2012. USCIS also received more than 20,000 H-1B petitions on behalf of persons exempt from the cap under the advanced degree exemption as of October 19, 2011. USCIS will reject cap-subject petitions for new H-1B specialty occupation workers seeking an employment start date in FY 2012 that are received after November 22, 2011. USCIS continues to accept cap-exempt petitions, DOD petitions and Chile/Singapore H-1B1 petitions requesting an employment start date in FY 2012.

- **H-2B Cap Count for FY 2012 Update**

As of November 18, 2011, USCIS received 8,536 petitions toward the 33,000 H-2B cap amount for the first half of Fiscal Year (FY) 2012. This count includes 7,751 approved petitions and 785 pending petitions. H-2B cap count information for the second half of FY2011 also is available

- **J1 Summer Work Travel Program**

Effective January 1, 2012, the Department of State (DOS) is restricting the size of the Exchange Visitor Program (J-1 visa) category of Summer Work Travel (SWT) to 2011 actual participant levels. SWT program sponsors in business for the full 2011 calendar year will not be permitted to expand their number of program participants beyond their actual total 2011 participant program size. No new applications from prospective sponsors for SWT program designation will be accepted at this time.

The program has been in operation since 1963 and helps the Department reach a segment of the youth demographic that often does not have the means to visit the United States unless they can work to defray their costs. Roughly one million foreign post-secondary students have participated in the past decade.

- **Bundle L-1 Filings**

As part of an effort to streamline and improve the adjudication process, USCIS will consider multiple applications grouped into "bundles" of L-1 petitions. As a result, businesses may petition for their employees to obtain L-1 nonimmigrant classification by filing Petition for a Nonimmigrant Worker when they need to temporarily move multiple employees to the United States for particular projects that require the employees' specialized knowledge.

- **USCIS Extends TPS Designation and EADs for Hondurans, Nicaraguans**

The Department of Homeland Security (DHS) has extended the designation of Honduras and Nicaragua for temporary protected status (TPS) and their Employment Authorization Documents

(EADs) for 18 months from the current expiration date of January 5, 2012, through July 5, 2013. Re-registration is limited to persons who previously registered for TPS under the designations and whose applications have been granted or remain pending. Certain nationals of Honduras and Nicaragua (or those having no nationality who last habitually resided in either of those countries) who have not previously applied for TPS may be eligible to apply under the late initial registration provisions.

The 60-day re-registration period for both countries began on November 4, 2011, and ends on January 5, 2012.

- **Anomalies in H-1B Workers' Use of Social Security Numbers** (October 2011 GCILC Immigration Newsletter)

The Social Security Administration's Office of the Inspector General (OIG) released a report on H-1B workers' use of Social Security Numbers (SSNs) that could result in more close monitoring of status violations by H-1B workers and potential liability for H-1B employers. The OIG estimated that about 7,131 (18 percent) of the 38,546 H-1B workers to whom the SSA assigned an SSN in 2007 may have used their SSNs for purposes other than to work for their approved employer.

A recent DHS study reported that about 21 percent of the H-1B petitions it examined involved fraud or technical violations. The types of fraud identified included counterfeit or forged documents, storefront or shell businesses, no bona fide job offer, and misrepresentation of H-1B status. The Department of Justice pursued criminal charges in multiple H-1B fraud cases.

IMMIGRANT WORKERS

- **USCIS Issues Draft EB-5 Memo**

The USCIS memo lays out the preponderance of evidence standard: "[T]he petitioner must establish each element by a preponderance of the evidence. That means that the petitioner must prove to us that what he or she claims is more likely so than not so. The memo also notes: "USCIS is to give deference to the state's designation of the boundaries of the geographic or political subdivision that will be the targeted employment area." It adds, however, that "USCIS must ensure compliance with the statutory requirement that the proposed area has an unemployment rate of at least 150 percent of the national average rate. For this purpose, USCIS will review state determinations of the unemployment rate and, in doing so, USCIS can assess the method or methods by which the state authority obtained the unemployment statistics."

Further, the memo clarifies that an investor's money that goes into a new commercial enterprise can be used in a variety of ways, including bridge financing, hiring personnel, or operating the company, while the immigrant's investment must result in the creation of jobs for qualifying employees, in order to enable the new commercial enterprise to create the jobs.

- **USCIS Institutes Direct E-Mail Communication for EB-5 Regional Center Applicants** (October 2011 GCILC Immigration Newsletter)

USCIS implemented the first phase in a series of proposed enhancements to the EB-5 immigrant investor program by allowing Form I-924 (Application for Regional Center Under the

Immigrant Investor Pilot Program) applicants to communicate directly with USCIS adjudicators via e-mail.

- **USCIS Announce Initiative To ‘Promote Startups and Spur Job Creation’** (October 2011 GCILC Immigration Newsletter)

In order to fuel the U.S. economy and stimulate investment by attracting foreign entrepreneurial talent of exceptional ability or those who can create jobs, form startup companies, and invest capital in areas of high unemployment, the DHS/USCIS announcement noted the following:

1. USCIS will conduct internal training on the unique characteristics of entrepreneurial enterprises and startup companies and incorporate input from a new series of stakeholder engagements;
2. An employment-based second preference (EB-2 visa) petition, generally, requires a job offer and a Department of Labor certification. These requirements may be waived under existing law if the petitioner demonstrates that approval of the EB-2 visa petition would be in the national interest of the U.S.;
3. As of June 30, 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; and
4. Premium processing service is being expanded for immigrant petitions for multinational executives and managers.

- **December 2011 Employment Based Visa Bulletin**

DOS has released its December 2011 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.

EMPLOYMENT BASED CATEGORIES					
Categories	Worldwide	China (PRC)	India	Mexico	Philippines
1 st	Current	Current	Current	Current	Current
2 nd	Current	15MAR08	15MAR08	Current	Current
3 rd	15JAN06	08SEP04	01AUG02	15JAN06	15JAN06
Other Workers	01JAN06	22APR03	22JUL02	01JAN06	01JAN06
4 th	Current	Current	Current	Current	Current
5 th	Current	Current	Current	Current	Current

Targeted Employment Areas/ Regional Centers	Current	Current	Current	Current	Current
5th Pilot Programs	Current	Current	Current	Current	Current

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.

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 is 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 to see the December 2011 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](#)

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