



GCI Immigration Newsletter - April 2013

The April 2013 GCI Newsletter includes:

Senate Immigration Bill (S.744): “BORDER SECURITY, ECONOMIC OPPORTUNITY, AND IMMIGRATION MODERNIZATION ACT”

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Senate Immigration Bill (S.744): “BORDER SECURITY, ECONOMIC OPPORTUNITY, AND IMMIGRATION MODERNIZATION ACT”

The followings are a few key points and changes. The bill proposes to:

- Establish a “Border Security Goal” for effective control in high-risk border sectors along the Southern border
- Establish a Comprehensive Immigration Reform Trust Fund and outlines the initial deposit amount, sources of funding, and users
- Establish a Registered Provision Immigrant (RPI) status, which is valid for 6 years, for undocumented persons in the U.S. prior to December 31, 2011 and an Adjustment of Status of RPI to Legal Permanent Resident (LPR) status
- Establish an Adjustment of Status for certain unauthorized persons who entered the U.S. as children (Development, Relief, and Education for Alien Minors Act of 2013)
- Establish an immigrant and non-immigrant Agricultural Worker Program
- Create a merit-based visa and point system and establish eligibility criteria for merit-based immigrants
- Eliminate the Diversity Visa (visa lottery)
- Make changes to Employment-based immigrant and non immigrant visas by increasing visas for skilled workers to 40% of total; maintain visas for special immigrants at 10% of total; create a three-year INVEST visa for entrepreneurs; eliminate sunset for non-minister special immigrants; increase annual cap on H-1B visas from 65,000 to 110,000; and create a new W visa category for less-skilled workers and their dependents
- Make changes to Family-based Immigration by reclassifying “Immediate Relatives” which are now spouses, minor unmarried children of U.S. Citizens (USC) and LPRs, and parents of USCs 21 and over; allow K status to be available for fiancé(e)s of LPRs;

exclude married sons and daughters of USCs 31 and over from the 3rd preference category; and eliminate the 4th preference category of siblings of USCs

- Make changes to Inadmissibility and Deportability grounds
- Require appointment of counsel at government expense, if necessary, to represent Unaccompanied alien children, Individuals who are incompetent due to serious mental disability, Particularly vulnerable individuals

The newly introduced bipartisan Senate bill offers a legalization program that provides a path to citizenship for certain undocumented immigrants after 13 years of maintaining/satisfying eligibility requirements and paying a total of \$2,000 in fines. The legalization program is subject to 3 triggers, including the Department of Homeland Security (DHS)'s "Comprehensive Southern Border Security Strategy" to achieve and maintain effective control between the ports of entry in all high-risk border sectors along the Southern border within 6 months of enactment.

The bill provides for employers to have access to the workers they need by allocating more visas in employment-based visa categories and by creating additional visa categories for both higher and less skilled foreign workers. Further, the proposed new system has an emphasis on education and merit in an attempt to attract foreign workers with advanced degrees in science, mathematics, and engineering.

The bill will be sent to the Senate Judiciary Committee and will undergo a mark-up procedure, where any amendments may be offered. If the bill gets a majority of the votes on the committee (comprised of 10 Democrats and 8 Republicans), it will move on to the floor of the Senate. The bill is expected to be filibustered: it will need 60 "yes" votes to end debate and move on to a final vote.

If the U.S. intends to continue to lead the global economy and maintain competitiveness in the 21st century, then lawmakers should focus on designing an immigration system that attracts talented and high skilled foreign workers and entrepreneurs rather than one that operates as a tool to control the influx of (potential) or existing unauthorized immigrants who are less educated with limited skills. A 21st century U.S. immigration system should be flexible and friendly, attracting talented foreign entrepreneurs, workers, and students educated in the U.S. while being responsive to our labor market need for less skilled workers.

H-1B Cap Reached

U.S. Citizenship and Immigration Services (USCIS) announced that it had received a sufficient number of H-1B petitions to reach the statutory cap for fiscal year (FY) 2014 as of April 5, 2013. USCIS also received more than 20,000 H-1B petitions filed on behalf of persons exempt from the cap under the advanced degree exemption. USCIS is not accepting any more H-1B petitions subject to the FY 2014 cap or the advanced degree exemption. This was the first time that the cap was reached within the first week of the filing period since 2008.

U.S. businesses use the H-1B program to employ foreign workers in specialty occupations, which require theoretical or technical expertise and knowledge in specialized fields, such as

scientists, engineers, or computer programmers. Employers can file H-1B petitions no earlier than six months in advance of the anticipated start date of the employment. The visa cap is 65,000 and an additional 20,000 for H-1B petitions filed on behalf of individuals with U.S. master's degree or higher.

USCIS Temporarily Suspends Adjudication of Most H-2B Petitions

USCIS has temporarily suspended adjudication of certain Form I-129 H-2B petitions for temporary non-agricultural workers while the government considers appropriate action in response to the court order entered March 21, 2013, *in Comite de Apoyo a los Trabajadores Agricolas et al. v. Solis*, 2:09-cv-00240-LDD (E.D. Pa). The court order granted a permanent injunction against the operation of a portion of the 2008 wage rule related to certain prevailing wage determinations and gave the Department of Labor (DOL) 30 days to comply with the court order.

The H-2B non-agricultural temporary worker program allows U.S. employers to bring foreign nationals to the U.S. to fill temporary non-agricultural jobs. There is a statutory numerical limit, or "cap," on the total number aliens who may be issued a visa or otherwise provided H-2B status (including through a change of status) during a fiscal year. Currently, the H-2B cap set by Congress is 66,000 per fiscal year, with 33,000 to be allocated for employment beginning in the 1st half of the fiscal year (October 1 - March 31) and 33,000 to be allocated for employment beginning in the 2nd half of the fiscal year (April 1 - September 30).

CBP To Launch New Arrival/Departure Record Process for Foreign Visitors

Foreign visitors arriving in the U.S. via air or sea who need to prove their legal-visitor status (e.g., to employers, schools/universities, or government agencies) will be able to access their U.S. Customs and Border Protection (CBP) arrival/departure record information online when the agency starts records automation on April 30, 2013.

Under the new process, a paper Form I-94 Arrival/Departure Record for international nonimmigrant travelers is not necessary upon arrival to the U.S. by air or sea since CBP will gather travelers' arrival/departure information automatically from their electronic travel records. However, advance information is only transmitted for air and sea travelers and CBP will still issue a paper I-94 at land border ports of entry. Implementation will begin on April 30 at five pilot ports of entry for four weeks.

USCIS To Launch Additional Security Screening Process

USCIS field offices will implement an additional security screening process for people coming to the field office for an appointment (I-485 interview, N-400 interview, N-400 oath ceremony, etc.). The individuals with a USCIS interview appointment will need to essentially complete biometrics processing (photographs and mini-fingerprinting) before they can proceed with the

appointment, though logistics of this process may vary by USCIS field office. This process is to allow officers to verify that the individual who appeared for biometrics collection at the Application Support Center (ASC) is the same individual named on the application or petition and who appears for the interview.

OBIM Program & National Security

DHS established the Office of Biometric Identity Management (OBIM), formerly the US-VISIT (United States Visitor and Immigrant Status Indicator Technology) Program, to strengthen border security, address critical needs in terms of providing decision-makers with critical information, and demonstrate progress toward performance goals for national security, expediting of trade and travel, and supporting immigration system improvements. OBIM collects and disseminates biometric information (digital fingerprint images and facial photos) from individuals during their entry/admission into the United States. This information is disseminated to specific DHS components; other Federal agencies; Federal, state, and local law enforcement agencies; and the Federal intelligence community to assist in the decisions they make related to, and in support of, the homeland security mission.

Immigration Detainees Win Right to Fair Hearing

The U.S. Court of Appeals for the Ninth Circuit in *Rodriguez v. Robbins* held, "Contrary to the government's rhetoric, this injunction will not flood our streets with fearsome criminals seeking to escape the force of American immigration law," but "provides individuals . . . a hearing where a neutral decision-maker can determine whether they might deserve conditional release from the prison-like setting where they might otherwise languish for months or years on end." This ruling curtails the government's practice of putting immigration detainees behind bars without ever holding a bond hearing to determine whether they should be detained in the first place.

May 2013 Visa Bulletin

DOS has released its May 2013 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 | | | | | |
|--|---|---------------------|---------|---------|-------------|
| Employment- Based | All Chargeability Areas Except Those Listed | CHINA-mainland born | INDIA | MEXICO | PHILIPPINES |
| 1st | C | C | C | C | C |
| 2nd | C | 15MAY08 | 01SEP04 | C | C |
| 3rd | 01DEC07 | 01DEC07 | 22DEC02 | 01DEC07 | 15SEP06 |
| Other Workers | 01DEC07 | 01SEP03 | 22DEC02 | 01DEC07 | 15SEP06 |
| 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.

Global Migration

- **Russia**

Russia has a restrictive and complicated visa program. Any foreign national who wants to travel Russia must have a Russian-based sponsor, which could be a hotel, tour company, relative, employer, university, etc. Russian law requires that the sponsor must apply on the traveler's behalf for replacement, extension, or changes to a Russian visa. Russia issues Personal/Private visa, Work visa, Business visa, Student visa, Tourist visa, and Transit visa. Depending on the type of visa you apply, a letter of invitation or tourist voucher is required. The transit visa is valid for no more than three days. The tourist visa is valid for no more than one month and the personal visa is valid for no more than three months. Business visas are valid for no more than one year; student visas are valid for the duration of studies. A valid visa is necessary to depart Russia as well. Foreign nationals, who overstay their visas' validity, even for one day, will be prevented from leaving until their sponsors intervene and request visa extensions on their behalf.

- **Virtual Global Taskforce**

Three new member countries have joined the Virtual Global Taskforce (VGT), an international alliance of law enforcement and private sector agencies dedicated to combating online child sexual abuse: Netherland, South Korea, and Indonesia. The VGT now consists of 12 international law enforcement agencies, and 11 private sector partners.

About Gulf Coast Immigration

Immigration and Global Migration are 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, GCI has been issuing monthly business immigration newsletters/updates and immigration alerts to announce fast-breaking developments.

GCI 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. GCI offers a free evaluation service for individuals who intend to apply for nonimmigrant and both employed- and family-based immigrant visas as to their immigration options and the likelihood of a successful case. To be considered for the free evaluation service, please e-mail info@gcimmigration.com , reference "Free Evaluation" in the subject line and include contact information. GCI conducts free seminars as a public service for those community organizations and groups interested in learning about U.S. immigration laws and policies. If you would like to have GCI present a free seminar please visit www.gcimmigration.com for more information.

GCI also conducts fee-based educational lectures/seminars and training for U.S. based academic institutions and businesses on information and developments on the U.S. immigration law and policy, including I-9 Compliance, E-Verify, and the EB-5 Program. For further information about GCI, publications and lectures and seminars, contact us at www.gcimmigration.com

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