



**November, 2009**

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**I. November 20, 2009 H-1B Cap Count**

As of November 20, 2009, the U.S. Citizenship and Immigration Services (USCIS) reports that approximately 56,900 H-1B cap-subject petitions had been filed for fiscal year 2010. USCIS previously reported that the additional 20,000 H-1B cases reserved for holders of advanced U.S. degrees already had been exhausted. This leaves room for approximately 8,100 new H-1B approvals under the 2009 quota, including the 6,800 H-1B visa numbers reserved for citizens of Singapore and Chile who seek H-1B1 visas pursuant to their respective free-trade agreements. USCIS will continue to accept all eligible H-1B cases until a sufficient number of H-1B and H-1B1 petitions have been received to reach the statutory limits.

**II. ICE Announces 1,000 New Workplace Audits**

Immigration and Customs Enforcement (ICE) Assistant Secretary John Morton recently announced the issuance of Notices of Inspection (NOIs) to 1,000 employers across the country. These NOIs advise employers that ICE will audit of their Form I-9s and related records in order to determine compliance with employment eligibility verification laws.

Assistant Secretary Morton said that “ICE is focused on finding and penalizing employers

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who believe they can unfairly get ahead by cultivating illegal workplaces.” He added: “We are increasing criminal and civil enforcement of immigration-related employment laws and imposing smart, tough employer sanctions to even the playing field for employers who play by the rules.”

The 1,000 businesses that received these NOIs were selected because of their connection to public safety and national security. In our experience, there also has been a substantial increase in the number of NOIs issued to all employers as ICE seeks to enforce the Obama administration’s directive to crack down on employer Form I-9 violations. These audits will involve a comprehensive review of Form I-9s, which employers are required to complete and retain for each individual hired in the United States after November 6, 1986. The audits may result in civil penalties and lay the necessary groundwork for criminal prosecution of employers who knowingly violate the law. Due to this ICE activity, it is imperative for employers to review their Form I-9s, together with their policies and procedures for completing and retaining them, to make sure that they satisfy all legal requirements.

### **III. USCIS Plans 25,000 On-site H-1B Inspections**

On November 17, 2009, USCIS announced that it plans to conduct 25,000 new on-site inspections of companies that have hired foreign workers in H or L nonimmigrant status during the fiscal year beginning October 1. This is close to a five-fold increase in inspections over the last fiscal year.

This tougher enforcement stance comes in response to a study that was conducted by the USCIS in 2008 that found fraud and other violations in approximately 20 percent of the H-1B applications. In reaction to the results of that study, United States Senator Charles Grassley (R-Iowa) sent a letter to Alejandro Mayorkas, USCIS Director, asking what the agency was doing to address these findings. Mr. Mayorkas reported that USCIS had begun a site visit and verification program in July 2009, and that this program was expanding. The November 17, 2009, announcement by USCIS represents the latest development in this effort.

This focus on H-1B compliance underscores the difficulties faced by U.S. workers in the current economic climate and makes it incumbent on employers to ensure that they comply with all substantive and record-keeping requirements of the H and L nonimmigrant programs. Here also, we recommend that employers not wait for USCIS to “knock at the door.” They should review the files of all foreign workers to make sure that they contain all necessary documentation, that each worker is performing the duties at the location described in the nonimmigrant petition, and that each worker is being paid at least what the law requires. Employers also should have policies in place for responding to these unannounced site visits so that all employees will know what to do, whom to contact and what to expect when they occur.

### **IV. CBP & USCIS Issue Holiday Season Travel Reminder**

The U.S. Customs and Border Protection (CBP) issued a statement reminding travelers who are planning trips outside of the United States this Thanksgiving to have their approved travel documents and to anticipate heavy traffic.

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According to the Western Hemisphere Travel Initiative (WHTI), which was implemented on June 1, 2009, U.S. and Canadian citizens, age 16 and older are required to present a valid, acceptable, approved travel document that denotes both identity and citizenship when entering the U.S. by land or sea.

WHTI compliant documents include the following:

- A passport;
- U.S. passport card;
- Enhanced driver's licenses (EDLs)-now produced by the states of New York, Michigan, Vermont and Washington; also the Provinces of Quebec, Ontario, Manitoba, and British Columbia; or a
- Trusted Traveler Program card (NEXUS, SENTRI and FAST).

CBP also reminds travelers that the I-551 form "Green Card" is acceptable for land and sea travel into the U.S.

In addition, CBP has advised travelers to consider taking the following steps while crossing the border:

- Familiarize themselves with the "Know Before You Go" section of the CBP Web site to avoid fines and penalties associated with the importation of prohibited items. "Know Before You Go" brochures are also available at border ports.
- Prepare for the inspection process before arriving at the inspection booth. Individuals should have their crossing documents available for the inspection and they should be prepared to declare all items acquired abroad. In addition, individuals should end cellular phone conversations before arriving at the inspection booth.
- Consult the CBP Web site to monitor border wait-times for various ports of entry, including Blaine and Sumas, WA, Sweetgrass, MT, and Pembina, ND. Information is updated hourly and is useful in planning trips and identifying periods of light use/short waits.
- During periods of heavy travel, travelers may wish to consider alternative, less heavily used border-crossings.
- Build extra time into trips in the event they occur during periods of exceptionally heavy traffic (i.e. Thanksgiving holiday and adjacent weekends).
- Know the difference between goods for personal use vs. commercial use.
- Do not attempt to bring fruits, meats, dairy/poultry products and firewood into the United States from Canada without first checking whether they are permitted.

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- Understand that CBP officers have the authority to conduct enforcement examinations without a warrant, ranging from a single luggage examination up to a personal search. Even during the holiday travel season, international travelers should continue to expect a thorough inspection process when they enter the U.S. from Canada.

On October 19, 2009, USCIS updated its fact-sheet to remind those who require an Advance Parole document to be sure to obtain one *prior* to leaving the U.S. In many cases, this means that applicants must obtain their Advance Parole well in advance of their scheduled trip. Individuals required to obtain Advance Parole include those who have:

- Temporary Protected Status (TPS);
- a pending application for adjustment of status to lawful permanent resident (LPR);
- a pending application for relief under section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA);
- a pending asylum application; or
- a pending application for legalization.

Finally, we remind all those individuals holding temporary work visas that the holidays are peak times for individuals to renew a nonimmigrant visa as well as times when foreign embassies and consulates are short staffed. Those intending on travelling during the holidays should ensure that they have a valid nonimmigrant visa in their passport or, if not, that they have made sufficient arrangements to obtain one prior to returning to the United States.

### **V. 2011 Diversity Visa Lottery Ends on November 30, 2009**

Entries for the DV-2011 Diversity Visa lottery must be submitted electronically between noon, Eastern Daylight Time (EDT) (GMT-4), Friday, October 2, 2009, and noon, Eastern Standard Time (EST) (GMT-5), Monday, November 30, 2009. No entries will be accepted after noon EST on November 30, 2009. During the registration period, information, instructions and the Electronic Diversity Visa Entry Form for the DV-2011 lottery appear at [www.dvlottery.state.gov](http://www.dvlottery.state.gov).

### **VI. DOS Issues December 2009 Visa Bulletin:**

The Department of State (DOS) recently issued its Visa Bulletin for December 2009. This Bulletin determines who can apply for permanent residence and when. The results were mixed. Employment-Based Third Preference is available, and the cut-off dates are as follows: for all charge-ability including China, Mexico and the Philippines, the date is June 1, 2002; for India, the cut-off date is April 22, 2001. The Employment-Based Second Preference for Indian and Chinese nationals are available and the cut-off date is January 22, 2005, for India, and April 1, 2005, for China. The monthly Visa Bulletin is available through the DOS Web site at: [http://travel.state.gov/visa/frvi/bulletin/bulletin\\_1360.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html)

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For more information or questions regarding the above, please contact:

New York  
Robert S. Groban, Jr.  
212/351-4689  
[rgroban@ebglaw.com](mailto:rgroban@ebglaw.com)

New York  
Pierre Georges Bonnefil  
212/351-4687  
[pgbonnefil@ebglaw.com](mailto:pgbonnefil@ebglaw.com)

Miami  
Hector A. Chichoni  
305/579-3270  
[hchichoni@ebglaw.com](mailto:hchichoni@ebglaw.com)

Newark  
Patrick G. Brady  
973/639-8261  
[pbrady@ebglaw.com](mailto:pbrady@ebglaw.com)

San Francisco  
Jang Im  
415/398-3500  
[jim@ebglaw.com](mailto:jim@ebglaw.com)

Houston  
Nelsy Gomez  
713/750-3136  
[ngomez@ebglaw.com](mailto:ngomez@ebglaw.com)

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