



- ▶ home
- ▶ job openings
- ▶ staff
- ▶ newsletters
- ▶ request for consultation

▶ directions

useful links

- ▶ US Citizenship & Immigration Services
- ▶ US State Department
- ▶ Embassy World
- ▶ Department of Labor ETA

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Immigration Law Update

Current Developments in Employment-Based Immigration

By Rosner Partners, L.L.C.

October 2010

- Immigration Enforcement Dramatically Increases Under the Obama Administration
- Diversity Visa Lottery Begins
- H-1B Quota Still Far >From Being Reached
- Employers with High Percentage of Employees in H & L Status Face Increased Fees
- DOS Warns US Citizens of Traveling to Mexico
- U.S. Consulates in Canada Implement New Appointment Scheduling
- USCIS Announces Adjustment of Fees for Immigration Benefits

This is the latest installment in our efforts to keep you apprised of the rapidly changing U.S. immigration environment. Some of the most recent changes could have a serious impact on you or your employees, and we urge you to communicate these changes to interested parties.

Immigration Enforcement Dramatically Increases Under the Obama Administration

The Obama Administration recently announced record-breaking immigration enforcement statistics achieved during the past fiscal year. Over the past fiscal year more than 392,000 undocumented immigrants were removed, including more than 195,000 who were convicted criminals. This reflects a focus on removal of criminal foreign nationals as an enforcement priority. These numbers represent a more than 70% increase in removal of criminal foreign nationals from the previous administration.

The administration has also targeted efforts against employers of undocumented immigrants. Since 2009, Immigration & Customs Enforcement (ICE) has audited more than 3,200 employers who were suspected of hiring undocumented immigrants – more than the entire amount from the previous administration. As a result of these efforts, more than \$50 million dollars in fines have been levied.

These enforcement efforts continue to grow. In the past month, ICE issued more than 500 Notices of Inspection to companies throughout the U.S. Companies who ignore their I-9 responsibilities do so at their own peril. Clothing retailer Abercrombie & Fitch recently paid a fine of more than \$1 million dollars after an ICE audit uncovered numerous deficiencies in the retailer's I-9 verification system.

Diversity Visa Lottery has Begun for FY2012

The annual Diversity Visa program is accepting applications online until 12:00 pm, EST on, November 3, 2010. All entries must be made via the U.S. Department of State's electronic DV Entry Form (E-DV) website at: www.dvlottery.state.gov. **No paper entries will be accepted.**

There are a total of 50,000 Diversity Visas each fiscal year designated for persons from countries with low rates of immigration to the United States.

Natives of the following countries will not be eligible to apply, because these countries sent more than 50,000 immigrants to the United States in the previous five years: **Brazil, Canada, China (mainland), Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, India, Jamaica, Mexico, Pakistan, Peru, Philippines, Poland, South Korea, United Kingdom (exception of Northern Ireland) and its dependent territories, and Vietnam.**

Please note that the U.S. Department of State advises all applicants to apply in advance of the last week applications are to be accepted. Heavy demand in the last week may result in website delays.

Additional information regarding the Diversity Immigrant Visa Program may be found at:

http://travel.state.gov/visa/immigrants/types/types_1322.html

H-1B Quota is Far From Being Reached

As of October 1, 2010, nearly two-thirds of the H-1B quota numbers available for fiscal year 2011 have been used up. For the H-1B regular cap there are 65,000 regular H-1B visas allotted and 40,600 eligible petitions have been received; as for the H-1B Master's Exemption cap, there are 20,000 visas allotted and 14,900 cap eligible petitions have been received.

If the numbers continue to be used up at this pace, H-1B visas should remain available for the rest of 2010.

New H & L Fee Implemented by USCIS, Public Law 111-230

Employers who are highly dependent on H and L visas face heightened application fees. This law requires an additional fee of \$2,000 for certain

H-1B petitions and \$2,250 for certain L-1A and L-1B petitions. This fee **only** affects employers for whom **more than 50%** of their workforce is on H and L visas. This law will remain in effect until September 30, 2014.

Until the forms are revised, United States Citizenship and Immigration Services has advised all petitioners to provide certification regarding the fee. A sample of this certification is as follows: "[Name of Employer] has over [insert total US employees] employees in the United States, of whom fewer than [insert number or percent] are H-1B or L nonimmigrants. As such, [employer name] is not subject to the additional fee required under Public Law 111-230.

Further information regarding PL 111-230 may be found at:

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543fd1a/?>

[vgnnextoid=27eac9514bb8a210VgnVCM100000082ca60aRCRD&vgnnextchannel=5b33aca797e63110VgnVCM1000004718190aRCRD](http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543fd1a/?vgnnextoid=27eac9514bb8a210VgnVCM100000082ca60aRCRD&vgnnextchannel=5b33aca797e63110VgnVCM1000004718190aRCRD)

DOS Warns US Citizens of Traveling to Mexico

The US Department of State ("DOS") has recently issued a warning to U.S. Citizens traveling to Mexico. Though millions safely visit Mexico each year, crime and violence are serious problems.

The DOS advises all U.S. citizens to understand the risks associated in traveling to Mexico and how best to avoid dangerous situations, as well as who to contact if one becomes a victim of crime or violence.

Certain tips have been given by the DOS. The DOS advises one to use common sense precautions such as: visiting only legitimate business and tourist areas during daylight hours; do not display expensive-looking jewelry, large amounts of money, or other valuable items; and, to avoid areas where criminal activity might occur.

Due to rising crime rates related to drug trafficking in Mexico, U.S. citizens should expect to encounter military and other law enforcement checkpoints when traveling in Mexico. The DOS advises all U.S. citizens to cooperate fully at these checkpoints. However, extreme caution should be exercised. Drug Trafficking Organizations (DTOs) have erected unauthorized checkpoints and killed motorists who have not stopped at them.

Recent violent attacks and persistent security concerns have prompted the DOS to urge U.S. citizens to defer unnecessary travel to Michoacán and Tamaulipas, parts of Chihuahua, Sinaloa, Durango, and Coahuila.

Large firefights have taken place between DTOs and the Mexican army—mostly occurring in broad daylight. The bulk of these firefights have occurred in northern Mexico, including Ciudad Juarez, Tijuana, Chihuahua City, Nogales, Nuevo Laredo, Piedras Negras, Reynosa, Matamoros and Monterrey. During these incidents, U.S. citizens have been trapped and temporarily prevented from leaving the area.

The levels of violence have particularly increased in Monterrey, spreading to areas near a school that many U.S. citizen children attend.

The DOS notes that the situation in Ciudad Juarez is of special concern. More than half of all Americans killed in Mexico in FY 2009 (whose deaths were reported to the U.S. Embassy) were killed in the border cities of Ciudad Juarez and Tijuana.

All U.S. citizens that are victim to crimes in Mexico are urged to contact the consular section of the nearest U.S. Consulate or Embassy for advice and assistance.

Further information regarding the Department of State's Travel Warning regarding travel to Mexico may be found:

http://travel.state.gov/travel/cis_pa_tw/tw/tw_4755.html

U.S. Consulates in Canada Implement New Appointment Scheduling

Effective immediately: All of the U.S. Consulate Generals in Canada have implemented a new appointment scheduling system. This system will require Foreign Nationals to complete Form DS-160 and pay the required MRV fee **before** they will be able to schedule an appointment.

Further information concerning this new requirement may be found at: <http://toronto.usconsulate.gov/content/index.asp>, as well as the other six Consulate General websites.

USCIS Announces Adjustment of Fees for Immigration Benefits

Due to USCIS's low revenue in fiscal years 2008 and 2009, and much lower revenue in 2010 than previously projected, USCIS has implemented an adjustment of fees. The USCIS is a fee-based organization with approximately 90% of its budget coming from fees paid by applicants/petitioners.

Adjustment of fees for immigration services is based on a two year, comprehensive review. The adjustment of fees will go into effect November 23, 2010. Highlights from this rule include the following:

The final fee rule will increase the average application and petition fees by approximately 10 percent. In recognition of the unique importance of naturalization, the final fee rule contains no increase in the naturalization application fee.

The final fee rule establishes three new fees for:

- Regional center designation under the Immigrant Investor Pilot Program (EB-5);
- Individuals seeking civil surgeon designation (with an exemption for certain physicians who examine service members, veterans, and their families at U.S. government facilities); and
- Recovery of the USCIS cost of processing immigrant visas granted by the Department of State.

The final fee rule adjusts fees for the premium processing service. This adjustment will ensure that USCIS can continue to modernize as an efficient and effective organization.

The final fee rule slightly reduces fees for six individual applications and petitions:

- Petition for Alien Fiancé (Form I-129F);
- Application to Extend/Change Nonimmigrant Status (Form I-539);
- Application to Adjust Status from Temporary to Permanent Resident (Form I-698);
- Application for Family Unity Benefits (Form I-817);
- Application for Replacement Naturalization/Citizenship Document (Form N-565); and
- Application for Travel Document (Form I-131), when filed for Refugee Travel Document.

The final fee rule eliminates two citizenship-related fees for those service members and veterans of the U.S. armed forces who are eligible to file an Application for Naturalization (Form N-400):

- Request for Hearing on a Decision in Naturalization Proceedings (Form N-336); and
- Application for Certificate of Citizenship (Form N-600).

Lastly, the final fee rule expands the availability of fee waivers to new categories, including:

- Individuals seeking humanitarian parole under an Application for Travel Document (Form I-131);
- Individuals with any benefit request under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008; and
- Individuals filing a Notice of Appeal or Motion (Form I-290B) following a denial of any application or petition that did not initially require a fee.

A more detailed description of what this final rule entails may be found at USCIS's website:

[http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?](http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=5be73dc5cb93b210VgnVCM10000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD)

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For additional information about any of the topics presented here, please **contact us**.

[Return to Newsletter Index](#)

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