

# Newsletter

## Immigration Monthly - October 2012

10/15/2012

### **LEGISLATIVE UPDATE:**

On September 28, 2012, President Obama signed Senate Bill S. 3245 into law. This law provides for extension of several key immigration programs including EB-5 Regional Center investment program for foreign entrepreneurs, E-Verify program that directly affects a number of U.S. employers and workers, Conrad State 30 J-1 Visa Waiver program providing certain immigration benefits to foreign doctors immigrating to the U.S., and Special Immigrant Nonminister Religious Worker program that confers immigration benefits upon foreign religious workers of various denominations.

### **DEPARTMENT OF HOMELAND SECURITY (DHS) UPDATE:**

U.S. Citizenship and Immigration Services (USCIS) has announced a new filing option for Canadian North American Free Trade Agreement (NAFTA) TN status applicants. As of October 1, 2012, the USCIS processing centers have started accepting Form I-129 Petitions for Nonimmigrant Worker filed on behalf of Canadian citizens seeking TN status classification.. This is a departure from the prior practice permitting original TN applications for Canadian citizens to be filed at the U.S. border only (i.e., outside the country). Under the new approach, Canadian nationals and their U.S. employers are able to choose between filing TN applications at the border or with the USCIS's offices within the United States. The latter route would provide TN applicants with an approval notice for their TN proceedings before they travel to the U.S. and "activate" that status at the border, while border applications that bypass the USCIS petition processing would continue to require border officer adjudication "on the spot," as the applicant is requesting U.S. entry. Specific TN application situations require case-by-case analysis and we recommend a thorough discussion of the two application filing options with your immigration counsel, as part of immigration planning for your Canadian national employees.

The USCIS has accepted approximately 100,000 Employment Authorization Document applications under the Deferred Action for Childhood Arrivals (DACA) program. A small number of applicants have already received their DACA-based EAD cards and are applying for U.S. jobs or updating their current employers with documentation on their new temporary work authorized status in the U.S. Importantly, employers of DACA beneficiaries must comply with all of the usual employment eligibility requirements and should remember to complete Forms I-9 for DACA workers and establish appropriate timelines for employment eligibility re-verification as required by the I-9 regulations. As a reminder, an EAD application filing under DACA (or any other immigration category) does not in and of itself provide a foreign national with work authorization in the U.S. Rather, the employer must ensure that the worker presents acceptable I-9 documentation at the time of hire and any subsequent re-verifications.

### **Department of State (DOS) News:**

Online registration for the annual Diversity Visa (DV) Program began on October 2, 2012 and is set to conclude on November 3, 2012 at 12 noon Eastern Daylight Time. All DV entries are submitted electronically at [www.dvlottery.state.gov](http://www.dvlottery.state.gov), and DV applicants can make submissions on their own or through authorized representatives. Importantly, the Entrant Status Check available on the lottery website above is the only means by which participants are notified of their lottery "win" or if they have not been selected. This means that applicants receiving notifications by e-mail or mail of their lottery selection are fraud targets and should not correspond and/or send money in response to any such mailings.

## U.S. Customs and Border Protection (CBP) Update:

Per recent data, in 2011, the U.S. immigration enforcement authorities deported a record number of unauthorized immigrants and anticipate similar data for the current year. According to the government, CBP and its sister agencies deported nearly 400,000 illegal immigrants during the government's Fiscal Year (FY) 2011. Deportees were from a number of different countries, with the majority coming from Mexico, Guatemala, El Salvador, and Honduras. While criminal immigrants are the primary target of the deportation efforts, these aggressive deportation measures and significant deportation statistics create serious problems for immigrant communities, in the absence of comprehensive immigration reform.

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