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# IMMIGRATION LAW UPDATE

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## Special points of interest:

- Happy Holidays to all of our clients and readers!
- ICE reports record year for fugitive arrests in 2007.
- Customs & Border Protection stop Canadian fire department from responding to NY state fire assistance request.
- US Department of Labor issues another FAQ regarding the backlog.

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## USCIS Reviewing Public Comments on Replacement “Green Card” Regulation

On August 22, 2007 US Citizenship published a regulation in the Federal Register that would require lawful permanent residents who currently hold a legal permanent residency card (green card) that does not contain an expiration date to file for a replacement card. The replacement card would have a ten year expiration date and contain electronically stored biometric information. This replacement card is currently issued by USCIS and the proposed regulation would not affect green cards which have a date of expiration on their face.

The Enhanced Border Security and Visa Entry Reform Act of 2002 required that green cards contain electronic biometric information.

USCIS had 298 public comments regarding the regulation as of the deadline date of September 21, 2007. USCIS reports that

they are now reviewing the public commentary on the proposed regulation and that these non-expiring green cards remain valid until the final regulation goes into effect.

In the meantime, current holders of the non-expiring green cards should consider filing for a new biometric green card now. There is no requirement to do so, but in filing now the applicant would likely avoid the eventual rush of applicants once the rule becomes final. This proactive approach would hopefully allow the applicant to receive the new electronic biometric green card in a speedier fashion than later on when the replacement becomes mandatory.

It is anticipated that USCIS will establish a date when the non-expiring green cards will no longer be valid when USCIS publishes the final rule in the



Filing now to replace old green cards may be worth while to avoid potential backlog delays once the rule is in effect.

Federal Register sometime in 2008.

## USCIS Issues Memo Regarding Death of an I-130 Petitioner

On November 8, 2007, US Citizenship & Immigration Services (USCIS) issued a policy memorandum regarding the death of the petitioning I-130 spouse during the course of the immigrant visa process. The memo was addressed to the filed offices and stated that the decision of the federal appeals court in *Freeman v. Gonzalez*, 444 F.3d

1031 (9th Cir. 2006) was incorrect and should not be followed in any of the other circuits where USCIS has offices. Therefore, this decision only benefits those living within the 9th Circuit (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington and Guam). The 9th Circuit held in *Freeman* that if the visa

petitioner dies after filing the I-130 Immigrant Visa for an immediate relative and the I-485 Adjustment of Status, the I-130 may still be approved. USCIS states in the memo that outside the 9th Circuit, a person who had been married is no longer legally a spouse once the other spouse has died for adjudication purposes.

## News From US Consular Posts

As many attorneys and visitors can attest, appearing for a consular interview or appointment can be frustrating, surprising or without incident depending on the post, interviewing consular officer and in some cases the time of day.

According to a November 15, 2007 article in the *Immigration Business News and Comment*, some have been reporting that US consular posts abroad are adopting a very difficult approach in adjudicating visa applications for aliens who have

an arrest or conviction for drunk driving or other alcohol related offenses. The report indicates that US consular posts in India specifically have denied visa applications for “driving under the influence” (DUI) offenses that an applicant may have as well as instances of referring the applicant to psychological examination.

This information reiterates the need to inform the attorney of any and all arrests or convictions. Many times these mat-

ters can be handled in advance if the information is disclosed to the immigration attorney. A conviction may need to be revisited to see if the sentence can be revised or vacated. In a worst case scenario an applicant may need to file a waiver of inadmissibility with the Consulate to enter the United States. This process can take several months depending upon the post where the application is to be filed and the seriousness of the conviction or arrest. The best practice is to be honest with your attorney.



**Consular posts are taking a tougher stance on certain alcohol related convictions and arrests.**

## Notes of Interest

Here are some noteworthy items that came in over the past 30 days...

- The USCIS contractor (Stanley, Inc. of Virginia) which staffs the processing facilities in Vermont and California has announced a 12%-20% pay cut for approximately 25% of their 1,000 contract employees.
- Presidential candidate Mitt Romney fired his landscap-
- ing service when the news media ran a story that the employees of the company working on Romney's Belmont, MA grounds were illegal aliens.
- An LA Times poll conducted between November 30—December 3, 2007 showed that 60% of Americans favored a path to citizenship for non-criminal illegal aliens; but then only 46% thought
- emergency health care should be available to immigrants and 40% thought public schools should be available to immigrants.
- A Pew Hispanic Center study reported in the New York Times that while only 25% of first generation Hispanics speak English well, 88% of second generation Hispanics speak English.

**“60% of Americans favored a path to citizenship for non-criminal illegal aliens.”**

## January 2008: EB-1, EB-2 and EB-3 Numbers Available

The January 2008 Visa Bulletin looked much like last month when the Department of State (DOS) moved the EB-2 and EB-3 visa numbers for China and India backward in a severe retrogression due to what they called a higher than expected demand in the first few weeks of the fiscal year. However, the numbers did not advance for November.

DOS left the visa numbers the same in some categories, EB-1

and EB-2 remained “current.” EB-3 is at October 15, 2002. China, India and Mexico EB-1 remained at “current.” China EB-2 severely retrogressed to January 1, 2003 and China EB-3 is now at November 1, 2001. India EB-2 retrogressed to January 1, 2000 and India EB-3 is at May 1, 2001. Mexico EB-2 remained at “current” and Mexico EB-3 remained at April 22, 2001 once again.

On the Family-Sponsored side

the news continued to be less than spectacular with continued slow progression. The entire world, as well as China and India had the same visa numbers with some progress: F-1 is February 1, 2002; F-2A is February 22, 2003; F-2B is November 22, 1998; and F-3 May 8, 2000. F-4 varied with 1996 & 1997 dates. Mexico and the Philippines lagged well behind the above dates. As always the visa bulletin can be located online: [www.state.gov](http://www.state.gov).

**Department  
Of  
State**



**The January visa bulletin showed no progress for India and China employment-based visa numbers and very little forward progress for family-based applicants as well.**

## ICE Arrested Over 30,000 Fugitive Aliens for FY 2007

US Immigration & Customs Enforcement (ICE) announced on December 4, 2007 that their Fugitive Operations Teams (dedicated teams who track down criminal aliens and immigration fugitives) made 30,408 arrests for Fiscal Year 2007. This number is up from FY 2006 when ICE arrested 15,462. ICE further announced that for the first time since records have been kept, the number of fugitive aliens has actually decreased. ICE states that they have a fugitive backlog of 595,000 aliens; this number

is 38,000 less than this time last year.

ICE is attributing this increased number of arrests is due to increased funding which has allowed for the deployment of more Fugitive Operations Teams across the United States. ICE currently has 75 teams operating across the United States as of the end of FY 2007. This is an increase of 23 teams from FY 2006. ICE also attributes the increase of arrests to coordination and sharing of information with

other federal agencies and with state and local law enforcement agencies.

In other ICE news 31 individuals were arrested in regard to an illegal Puerto Rican birth certificate and social security card distribution ring. The individuals involved were selling fraudulent Puerto Rican birth certificates, which can be used as proof of US Citizenship, in the Delaware area. Four of the individuals face criminal charges while the 27 others face immigration removal hearings.



ICE had a record year for arrests of fugitive aliens in 2007.

## More Notes of Interest

Here are some additional noteworthy items that came in over the past 30 days...

- TN visa applicants in Mexico City can now schedule their visa appointment on line with the Consulate at MexicoCityTNVisas@state.gov .
- Two border enforcement bills were introduced in Congress on November 1, 2007; HR 4065 and S 2294
- both call for enhanced border security and stricter enforcement of current immigration laws.
- US Department of Homeland Security is now collecting 10-print rather than 2-print fingerprints from visitors arriving at Washington/Dulles International Airport: Atlanta, Boston, Chicago, San Francisco, Houston, Miami, Detroit, Orlando and
- JFK/New York will follow suit in the next few months.
- The Department of State (DOS) will open a new passport center in Tucson, AZ in the Spring of 2008 to join the only current passport printing center in Hot Springs, AK; each center will be able to produce 10 million passports per year at full capacity.

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## Pre-July 16 Labor Certifications to Expire on January 12, 2008

On July 16, 2007, the US Department of Labor's (DOL) new regulations took effect and made a number of changes to the labor certification process. Our July 2007 *Immigration Newsletter* discussed some of these changes including the need for employers to pay for the PERM portion of the labor certification process and not the employee where the attorney represents both the company and the employee and the end to substitution on ap-

proved labor certifications.

In regard to labor certifications approved before July 16, 2007, DOL regulations stated that they will expire if not filed within 180 days of the new regulation. Therefore, labor certifications certified before July 16, 2007 will expire on January 12, 2008 if not filed with a supporting I-140 Immigrant Visa petition at US Citizenship & Immigration Services (USCIS) by that date. This date

is a Saturday and at this point applicants should assume that the approved labor certification and I-140 must be received at USCIS by Friday, January 11, 2008.

Labor certifications certified on or after July 16, 2007 will expire if not filed with a supporting I-140 within 180 days of certification. In both cases, the certification is preserved if filed with an I-140 at USCIS prior to expiration.



Pre-July 16, 2007 labor certification approvals must be filed with USCIS by January 12, 2008.

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**Links of Interest:**

[www.state.gov](http://www.state.gov)  
[www.uscis.gov](http://www.uscis.gov)  
[www.foreignlaborcert.doleta.gov](http://www.foreignlaborcert.doleta.gov)  
<http://pds.pbis.doleta.gov>

[http://  
maiona.lawoffice.com](http://maiona.lawoffice.com)

  
**M&M, P.C.**

**Matthew J. Maiona** practices immigration law at Maiona & Maiona, P.C. in Boston, where he is a partner and head of the immigration law department. Attorney Maiona represents clients nation-wide ranging from hospitals, environmental companies, information technology companies, the hotel/hospitality industry, construction, architectural firms, retail, engineering and insurance companies to individuals seeking visas to work and live in the United States. Attorney Maiona represents both employers and employees before the United States Citizenship & Immigration Services, United States Department of Labor, The Department of Homeland Security, The Department of State, U.S. Embassies, Consulates and state labor agencies.

Attorney Maiona has been the keynote speaker at seminars for the Employment Management Association of New England and Sterling Education Services, as well as private recruiting firms on the topic of business immigration law. Attorney Maiona is a contributing author to the Massachusetts Continuing Legal Education's two volume treatise: *Immigration Practice Manual*. Attorney Maiona received his B.A. cum laude from Boston College and his J.D. from Suffolk University Law School. Attorney Maiona is a member of the American Immigration Lawyers Association and on the Executive Board for the New England Chapter of the American Immigration Lawyers Association. Attorney Maiona can be reached at 617-695-2220 x103 or by email at [Matthew@maionalawoffice.com](mailto:Matthew@maionalawoffice.com)

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Attorney Ward received her B.A. from Assumption College and her J.D. from Suffolk University Law School. Attorney Ward is a member of the New England chapter of the American Immigration Lawyers Association. Attorney Ward can be reached at 617-695-2220 x105 or by email at [Sara@maionalawoffice.com](mailto:Sara@maionalawoffice.com).

## 2007 Offers No Relief to Those Seeking Immigration Reform

2007 has come and gone without any immigration relief for legal and illegal immigrants. Illegal immigrants saw a number of bills fall to defeat in the hands of Congress. Among those defeats were the Comprehensive Immigration Reform Act which would have assisted illegal immigrants by putting them on the path to residency over time and the DREAM Act which would have made hundreds of thousands of school children eligible for legal residency.

Legal non-immigrants saw the annual allotment of H-1B visas turn from an application process to a lottery as approximately 150,000 applicants applied for approximately 66,000 H-1B visas.

Legal immigrants saw the green card process regress even



**Another year passes without immigration reform.**

further into the unknown, after being "saved" by the July 2007 visa bulletin fiasco when US

Citizenship & Immigration Services (USCIS) relented in the face of federal lawsuits and Congressional inquiry and allowed thousands to file adjustment of status applications and associated benefit applications without any certainty as to when those residency cases might be approved.

Regardless of your status, legal or illegal, one thing seems to be common to all: wait. Until Congress makes some changes to the current immigration laws, waiting will be common to all because USCIS and the Department of State cannot give what they do not have. Until Congress increases the number of immigrant and non-immigrant visas, there will be many people waiting for residency for years to come.