

US POSTS IN INDIA SHOW SHARP DROP IN L VISA ISSUANCE

The National Foundation for American Policy (NFAP) is reporting that the number of L-1 visas issued at U.S. posts in India declined by 28 percent from 2010 to 2011. NFAP obtained this data from the U.S. Department of State.

NFAP reports that the official data shows that L-1 visa approvals went from 35,896 in Fiscal Year (FY) 2010 to 25,898 in FY 2011. At the same time that L-1 visas issued in India declined by 28 percent, L-1 visas issued in the rest of the world rose by 15 percent (from 38,823 in FY 2010 to 44,820 in FY 2011).

NFAP reports that the increased denials of L-1 visas is having a negative impact on growth, projects and product development in the United States, according to companies.

“The release of the L-1 visa data makes it difficult for U.S. government officials to argue that nothing different is going on in India when compared with the rest of the world,” said Stuart Anderson, executive director of the NFAP. “The information that L-1 visas declined in India comes after the U.S. embassy in Delhi announced the number of H-1B visas issued there increased

from 2010 to 2011. A decline of 28 percent in L-1 visas issued in India from 2010 to 2011 at the same time that employers have seen an increase of 15 percent in L-1 visas issued in the rest of the world, using the same law and regulations, indicates something is amiss.” The full report can be found at www.nfap.com.



ICE ISSUES NEW AUDIT NOTICES

Employers are reporting a new round of visits from Immigration and Customs Enforcement (ICE) agents within the past 30 days. ICE has not made any formal announcements regarding the

issuance of new notices, but it seems that a new round of audits have begun. No numbers have been confirmed as to how many employers nationwide will be receiving Notices of Inspection

(NOIs). However, it is believed that this round of NOIs were issued based upon “tips and leads” which could lead to criminal indictments. This is another reminder to employers to audit their I-9s!

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SPECIAL POINTS OF INTEREST:

- The Fiscal Year 2012 H-1B cap has been reached as of November 22, 2011.
- Happy Holidays to all of our clients around the world!
- Matthew Maiona was named one of the Top Immigration Lawyers in the Northeast by *Arrive Magazine* and *Avvo* in the November/December 2011 issue of *Arrive Magazine*.

NEWS FROM THE US DEPARTMENT OF LABOR

Here are some recent updates regarding the US Department of Labor (DOL):

- The PERM processing times can be found under the tab "Performance Information" on the iCERT portal at <http://icert.doleta.gov/>. As of November 1, 2011, DOL is working on applications filed prior to the following dates: non-audited - August 2011; audited - March 2011; and appealed - September 2009.
- The Board of Alien Labor Certification Appeals (BALCA) rejected the CO's claim that the application was incomplete, and therefore deniable

under 20 CFR 656.17(a), because the area codes listed did not match the location of the employer's office and the alien's home. (*Matter of Digibitz Technologies*, 11/10/11)

- In a case governed by the pre-January 1, 2009 prevailing wage rules, the employer's omission of the PWD request, when it had submitted the PWD itself was sufficient, and the CO's denial under 20 CFR §656.20(b) was reversed. (*Matter of Schnabel Engineering*, 11/9/11).
- BALCA reversed the PWD and

remanded for an ACWIA wage finding the employer is an affiliated or related nonprofit entity under 20 CFR §656.40(e)(1)(ii) because it is attached to Harvard Medical School as a member hospital. (*Matter of Children's Hosp.*, 11/15/11)

- Dr. William Carlson, DOL Administrator, OFLC wrote a letter to AILA member Josue Villanueva, explaining that the 30-day recruitment period for electronic journal ads is consistent with the normal industry practice and provides reasonable notice of the job opportunity.

NOTES OF INTEREST

- "A sustained federal crackdown made 2011 a banner year for deportations. A record 397,000 undocumented immigrants were sent packing. And while the Obama administration cheers that more than half of those deported were convicted of crimes, advocates warn of a troubling by-product of rising immigration enforcement: children left be-

hind as natural-born citizens absorbed by the foster-care system." - *San Antonio Current*, Nov. 16, 2011.

- "New studies by scholars from both liberal and conservative think tanks conclude that members of the great wave of con-

temporary immigration, who flocked here in the 1990s, are integrating into U.S. society at a healthy clip and are more assimilated than their brethren in other countries." - *Miriam Jordan, Wall Street Journal*, Nov. 14, 2011.

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US CUSTOMS & BORDER PROTECTION UPDATE

Here is what's going on at Customs & Border Protection (CBP):

- On November 10, U.S. Customs and Border Protection announced a series of upgrades at the El Paso port of entry designed to enhance overall security and speed the entry process. New efficiency initiatives

include a pilot gate system installed at the Paso Del Norte crossing to expedite the secure entry of pedestrians; Ready Lanes now operational at the PDN and Bridge of the Americas crossings; high-intensity



Upgrades at El Paso should help ease traffic

LED lane signage above vehicle lanes at PDN and Ysleta; and a short distance AM radio station to be rolled out in the coming months at the Ysleta port which will broadcast traveler information. For more information go to www.cbp.gov.

DEPARTMENT OF STATE/CONSULATE UPDATE

Department Of State



HELSINKI The U.S. Embassy in Finland is undergoing renovations. Please go to the Embassy website for more information on how to schedule an appointment. Appointments also may be scheduled at the U.S. Embassy in Tallinn, Estonia, while services in Helsinki

are limited.

DAMASCUS The U.S. Embassy in Syria is currently providing limited nonimmigrant and immigrant visa services. Please review the U.S. Embassy Damascus website for detailed information and updates prior to traveling to the Embassy.

WASHINGTON, DC DOS issued a press release announcing that as of November 19th, the U.S. and Russia continued to work on a visa issuance agreement that would allow tourists and business travelers from both the U.S. and

Russia to receive visas with validity periods of 36 months, valid for multiple entries.

WASHINGTON, DC DOS has issued new Travel Warnings (long term conditions) in November for Burundi, Eritrea, Kenya, Guinea and North Korea and Travel Alerts (short-term conditions) for Bahrain, Thailand, Liberia, Egypt and the Democratic Republic of the Congo. These travel warnings and alerts generally advise against non-essential travel to the listed countries due to conflicts, terrorist activities, public disturbances or natural disasters. All travel warnings can be found at www.state.gov/travel.

DECEMBER VISA BULLETIN NEWS

The December 2011 Visa Bulletin has been released by the Department of State (DOS). **Employment-Based (EB)**: Worldwide EB-1 and EB-2 remained “current” and EB-3 is at January 15, 2006. China, India and Mexico EB-1 remained “current.” China EB-2 is at March 15, 2008 and China EB-3 is at September 8, 2004. India EB-2 is at

March 15, 2008 and India EB-3 is at August 1, 2002. Mexico EB-2 remained “current” and Mexico EB-3 is at January 15, 2006. **Family-Sponsored (F)**: The entire world, as well as China and India had little progress: F-1 is September 1, 2004;



F-2A is March 22, 2009; F-2B is August 15, 2003; and F-3 is October 8, 2001. F-4 varied with 1996 and 2000 dates. Mexico and the Philippines lagged well behind the above dates. The visa bulletin can be located online: www.travel.state.gov.

THE RETURN OF PERM AUDITS AT DOL?

The Office of the Inspector General (OIG) for the Department of Labor (DOL) issued the Top Management Challenges for DOL on November 15, 2011. One of the “Top Challenges” listed was: *Maintaining the Integrity of Foreign Labor Certification Programs*. Employers should believe that this is a precursor to new and more vibrant PERM audits.

The OIG noted what DOL is doing to address the challenge: “ETA is piloting a new risk management model in its PERM.... [T]his new risk management model allows ETA to assign risk ratings to individuals applying to its PERM program and spend the appropriate amount of time reviewing the higher risk applications....”

The concern for employers should be the learning curve in determining what is a “higher risk application.” Keep your PERM audit files current!



Are more PERM audits on the way?

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Sara K. Ward has practiced immigration law for over 8 years and is a partner at *Maiona Ward Immigration Law* in Boston, MA. Attorney Ward represents families and individuals worldwide with non-immigrant and immigrant visa processing at US Consulates, as well as legal permanent residency at USCIS offices across the United States. She has helped families in obtaining immigrant visas for their family members at Consular posts including but not limited to Amman, Bogotá, Bridgetown, Kingston, Guatemala City, Islamabad, San Salvador, Santiago, Lima, Montreal, Santo Domingo, Rio de Janeiro, Addis Ababa, Shanghai, Seoul, Manila, Istanbul, Tirana and Katmandu. Attorney Ward is fluent in Spanish. Attorney Ward was recognized as a Rising Star in the field of Immigration Law by the "Super Lawyer" publication of *Boston Magazine*. 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 AILA and is the AILA NE liaison to local Community Based Organizations.

DEPARTMENT OF STATE VISA ISSUANCE UPDATE

The US Department of State recently released a list of embassies or consulates that currently provide limited visa services, as well as locations where visa services are suspended, and countries that do not have U.S. embassies or consulates. U.S. embassies and consulates are sometimes forced to limit or suspend visa services because of natural disasters, civil unrest, war, and/or security concerns, among other reasons. This list is a helpful reminder that travelers should always go to the embassy website before traveling. The website is located at www.travel.state.gov. There are six

embassies with limited visa services: Cote D'Ivoire – Abidjan; Finland – Helsinki; Montenegro – Podgorica; Nether-

lands Antilles – Curaçao; Saudi Arabia – Jeddah; and Syria – Damascus. Three embassies have suspended visa services.

They are: Belarus – Minsk; Eritrea – Asmara; and Libya—Tripoli.

Finally, it is important to remember that nine countries do not have a U.S. embassy or consulate. These countries are: Iran; North Korea; Antigua and Barbuda; Dominica; Grenada; St. Kitts and Nevis; St. Lucia; St. Vincent and the Grenadines; and Guinea-Bissau. If you need assistance anywhere in the world contact our office and we can assist you through our Global Partners network.



State Department website is full of useful Consulate tips.