



**News from the Alliance of Business Immigration Lawyers
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Details...

1. DREAM Act Fails in Senate

The House of Representatives passed the DREAM (Development, Relief and Education for Alien Minors) Act on December 8, 2010, but the Senate failed to pass the bill on December 18. The outcome was 55-41, which was five votes short of the 60 needed to bypass a filibuster by Republicans and move the bill forward.

Prospects are dim for enactment in the near future, although Democrats vowed to push for the legislation and to include it in any comprehensive immigration reform bill. President Barack Obama said he found the results "incredibly disappointing" but that his administration "will not give up on the DREAM Act, or on the important business of fixing our broken immigration system." House Speaker Nancy Pelosi said, "Though disappointed by the result of today's DREAM Act vote in the Senate, we are not deterred in our determination to continue advocating for this critical legislation." Sen. Lindsey Graham (R-S.C.) countered, "We're not going to pass the DREAM Act or any other legalization until we secure our borders. It will never be done stand-alone. It has to be part of comprehensive immigration reform." (The Senate passed a \$600 million border security bill in August.)

The DREAM Act, which has a long history, would allow qualified undocumented children to apply for conditional legal immigration status and eventually to obtain permanent residence if they meet certain requirements.

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2. USCIS Delays Deemed Export Certification on New I-129

The new edition of Form I-129, Petition for a Nonimmigrant Worker, took effect on December 23, 2010, as previously announced by U.S. Citizenship and Immigration Services. The form is used to file nonimmigrant petitions for employees in categories such as H-1B, L-1 and O-1. The new edition has a revision date of November 23, 2010.

Part 6 of the new I-129 contains a new "Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the United States." The employer must certify, with respect to any technology to which the employee will have access on the job, that a license from the Departments of Commerce or State is not required to release the technology to the foreign national (or, in the rare case that a license is required, the employer will restrict the beneficiary's access to the technology until a

license is obtained). Until February 20, 2011, petitioners may leave Part 6 blank.

As background, U.S. law prohibits the export of controlled technology and technical data to certain foreign nationals located within the United States without a license to do so. U.S. law treats as an export the release of controlled technology or technical data to a foreign national working in the United States, even if the company does not export anything overseas. Technology or source code is considered released for export when it is made available to foreign nationals for visual inspection (such as reading technical specifications, plans, or blueprints), when technology is exchanged orally, or when technology is made available by practice or application under the guidance of persons with knowledge of the technology. Such exports of controlled technology or technical data must be authorized through an export license issued by the Commerce or State Department before release to the nonimmigrant foreign national. To properly complete the new I-129 form, an employer must first classify the technology or technical data that will be released to or be accessed by a prospective foreign national employee to determine whether an export license may be required.

The Commerce Department lists items subject to export licenses at http://www.access.gpo.gov/bis/ear/ear_data.html#ccl. The State Department's export regulations are at http://www.pmddtc.state.gov/regulations_laws/itar.html. The Commerce Department has a series of six training modules, "Essentials of Export Controls," at http://www.bis.doc.gov/seminarsandtraining/essentials_of_export_ctrls.htm. The training modules can also be downloaded in PDF format at http://www.bis.doc.gov/seminarsandtraining/training-modules/essentials_of_export_controls_modules_1_6.pdf.

A two-page fact sheet focusing on universities, which includes suggested questionnaire content for the new export controls certification, is available at <http://xa.yimg.com/kq/groups/15854395/2106905181/name/I-129%20AUECO%20Practice%20Tips.pdf>.

A related USCIS announcement is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=ef1ee46afc5fc210VgnVCM100000082ca60aRCRD&vgnnextchannel=e7801c2c9be44210VgnVCM100000082ca60aRCRD>.

For additional advice on the new I-129 and deemed export attestations, contact your local Alliance of Business Immigration Lawyers (ABIL) attorney.

To locate an ABIL attorney, go to <http://www.abil.com/> and click on "ABIL Attorneys" or "Global Attorneys."

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3. File H-1B Petitions Now, ABIL Advises; USCIS Plans Proposed Rule to Establish Electronic H-1B Pre-Registration

H-1B filings may increase as the 65,000 numerical limit (cap) approaches. The Alliance of Business Immigration Lawyers (ABIL) recommends filing petitions now. U.S. Citizenship and Immigration Services (USCIS) reports that as of December 17, 2010, 53,900 cap-eligible petitions have been approved or were pending. USCIS has also receipted 19,700 H-1B petitions for individuals with advanced degrees, near that separate cap of 20,000. Once the caps are reached, no new H-1B cap-subject petitions will be accepted until April 1, 2011.

In related news, USCIS plans to propose a rule to establish electronic pre-registration for H-1B petitions. Reportedly, this would mean that an employer would first register online and wait for an H-1B number before filing the full petition with documentation. The idea is to reduce the burden on both employers and the agency in preparing and submitting petitions, entering data, and returning non-selected petitions. Details of the proposed rule and a date of publication have not yet been released.

For advice or help in filing an H-1B petition, contact your local ABIL attorney. To locate an ABIL attorney, go to <http://www.abil.com/> and click on "ABIL Attorneys" or "Global Attorneys." For more on H-1B statistics and filing requirements, see

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=4b7cdd1d5fd37210VgnVCM100000082ca60aRCRD&vgnnextchannel=73566811264a3210VgnVCM100000b92ca60aRCRD>.

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4. USCIS Issues Final Rule for CNMI-Only Investor Program

U.S. Citizenship and Immigration Services (USCIS) issued a final rule on December 20, 2010, that creates a nonimmigrant investor visa classification in the Commonwealth of the Northern Mariana Islands (CNMI). The "E-2 CNMI Investor Visa" allows foreign long-term investors to reside in the CNMI through December 2014. Petitions for the E-2 CNMI Investor classification will be accepted beginning January 18, 2011. Petitions received before that date will be rejected.

Authorized by the Consolidated Natural Resources Act (CNRA) of 2008, the E-2 CNMI Investor Visa will be issued for two years, is renewable, and is valid only in the CNMI. The investor's spouse and children may also apply for status as dependents of the investor.

Long-term investors are individuals with certain CNMI-issued investor permits that required a fixed minimum investment amount and whose permits can be renewed over a period of multiple years.

Those eligible for E-2 CNMI Investor status include long-term business, foreign, and retiree foreign investors. To qualify, the investor must:

- have been admitted to the CNMI with a long-term investor visa under CNMI immigration law before November 28, 2009;
- have continuously maintained residence in the CNMI with long-term investor status;
- currently maintain the investment(s) that formed the basis for the CNMI long-term investor status; and
- otherwise be admissible to the U.S. under the Immigration and Nationality Act.

Investors must file an initial petition before January 18, 2013, and must use the existing Petitioner for a Nonimmigrant Worker, Form I-129, with Supplement E. After the initial petition is granted, extensions are available until December 31, 2014. The processing fee is \$325, plus an \$85 biometrics fee for certain beneficiaries who require an initial grant of status in the CNMI. Fee waivers for inability to pay are available.

The final rule is available at <http://edocket.access.gpo.gov/2010/pdf/2010-31652.pdf>. The announcement is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=5fb279cebb4fc210VgnVCM100000082ca60aRCRD&vgnnextchannel=a2dd6d26d17df110VgnVCM1000004718190aRCRD>. A related Q&A is available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=ab3379cebb4fc210VgnVCM100000082ca60aRCRD&vgnnextchannel=6abe6d26d17df110VgnVCM1000004718190aRCRD>. For more information, see the CNMI Web page at <http://www.uscis.gov/cnmi>.

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5. CBP Expands Global Entry 'Trusted Traveler' Program to Mexicans, SENTRI, NEXUS Members

U.S. Customs and Border Protection (CBP) published two Federal Register notices on December 29, 2010, announcing the expansion of Global Entry benefits. One notice extends Global Entry enrollment to eligible Mexican nationals; the other notice extends Global Entry benefits to SENTRI and NEXUS members.

Global Entry is a CBP trusted traveler program that allows pre-approved members an alternative to regular passport processing lines. CBP reports that the program "reduces average wait times by 70 percent while maintaining and enhancing security."

To become a member of Global Entry, eligible Mexican nationals must complete an online application available at the Global Online Enrollment System (GOES, available at <https://goes-app.cbp.dhs.gov/>), pay a non-refundable \$100 application fee, pass a background investigation conducted by both CBP and the Mexican government, and undergo an in-person interview with a CBP officer at an enrollment center. Mexican nationals must satisfy all requirements of the Global Entry pilot program to become members. CBP began accepting applications from eligible Mexican nationals on December 29.

Also as of that date, SENTRI members may now apply for Global Entry benefits for no additional fee. CBP advises SENTRI members to check their status on the GOES Web site and indicate their wish to use Global Entry. SENTRI members who are Mexican nationals must pass a risk assessment conducted by the Mexican government before receiving full Global Entry benefits.

All NEXUS members will also be able to receive the benefits of Global Entry at no additional cost via automated kiosks at participating airports. CBP advises NEXUS members to check their status in their GOES accounts to confirm whether they need to submit 10 fingerprints or any other necessary documentation to receive Global Entry benefits.

The Global Entry pilot program was launched in 2008 and is available at 20 major airports in the U.S for approved U.S. citizens, lawful permanent residents, and citizens of the Netherlands over 14 years of age who have a valid machine-readable passport and who consent to background screening. To date, Global Entry members have used the kiosks more than 600,000 times, and there are more than 100,000 members in the program.

Global Entry applicants may complete their interview and biometric data collection at enrollment centers at any of the 20 sites. Approved members may use kiosks at any of the sites to complete their CBP processing upon arrival from international travel. At the kiosk, Global Entry members insert their passport or lawful permanent resident card into a document reader, provide digital fingerprints for comparison with fingerprints on file, answer customs declaration questions on the kiosk's touch screen, and then present a transaction receipt to CBP officers before leaving the inspection area.

CBP has signed arrangements with the governments of the United Kingdom and Germany to reciprocate Global Entry benefits with citizens from their countries.

CBP's announcement is available at http://www.cbp.gov/xp/cgov/travel/travel_news/global_published.xml. The Federal Register notices are available at <http://edocket.access.gpo.gov/2010/pdf/2010-32832.pdf> (Mexicans) and <http://edocket.access.gpo.gov/2010/pdf/2010-32829.pdf> (NEXUS and SENTRI participants).

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6. USCIS Seeks OMB Approval for New E-Verify Employer Survey

U.S. Citizenship and Immigration Services is seeking Office of Management and Budget (OMB) approval for a new information collection to survey 900 employers about the E-Verify program. The University of Arizona will conduct the survey, and final summary results will be publicly released.

According to a USCIS letter to be sent to potential participating employers, "[t]he goals of the evaluation are to understand the knowledge and perception of the E-Verify program and its utility and barriers to utilization of E-Verify. Congress is interested in this information to help it determine whether E-Verify should be made mandatory for a larger group of employers and, if so, what modifications to the current Program need to be made."

USCIS' OMB notice is available at <http://edocket.access.gpo.gov/2010/pdf/2010-32546.pdf>. The employer letter is available at <http://www.regulations.gov/#!documentDetail;D=USCIS-2010-0018-0004>. The proposed survey is available at <http://www.regulations.gov/#!documentDetail;D=USCIS-2010-0018-0007>.

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7. ABIL Global: Turkey Implements Significant Changes in Work Permit Criteria

Turkey's Ministry of Labor and Social Security released a communiqué on July 28, 2010, regarding criteria to be considered in adjudicating work permits. The communiqué is pursuant to Article 13 of the Implementation Regulation on the Foreigner's Work Permit Code (#4817). It is unprecedented for the Ministry to publicly announce concrete details of adjudication factors.

The Ministry indicates in the communiqué that in adjudicating work permits, the following criteria must be met:

1. New 5:1 Ratio: There must be at least five Turkish citizen employees per foreign national applicant, as evidenced on payroll records.
 - a. (*Exception*: Newly established legal entities can be founded by a foreign individual. If such an investor owns at least 20 percent (but amounting to no less than Turkish Lira/TRY 40,000 - the current exchange rate is 1.5 TRY to 1 USD) worth of shares of the entity and, within 6 months, the five-employee criterion can be met, a work permit may be approved for the foreign partner/investor.)
2. Capital requirements: The employer's *paid in capital* must be at least TRY 100,000. In the alternative, the employer may show gross (assumedly annual) sales amounting to TRY 800,000, or exports with a gross annual value of US \$250,000.
 - a. (*Exception*: In the case of a nonprofit or private employer, criterion #2 will not apply.)
3. Salary: The foreign employee's salary must be commensurate with the position offered. More specifically, certain managers, pilots, and engineers/architects and teachers cannot be paid less than a specified amount times the minimum wage. (Gross minimum wage is TRY 760.50 for the period of July 1, 2010, through December 31, 2010.) All others must be paid at least 1.5 times the minimum wage.

The communiqué offers guidance on other professions and workplaces as well.

Additionally, issued in the Official Gazette on July 31, 2010, were changes to the "Application Regulation of Law No. 4817 Related to Work Permits for Foreigners."

The two most significant amendments specify:

1. Online filing: Work Permit applications must be filed online. The signed application form and supporting documents must be sent to the Ministry within 6 business days from the online application date.
2. Employer's finances: The Ministry now again requires the prior year's profit-and-loss statement and balance sheet approved by the certified financial advisor or Tax Office. (This reverses a decision in February 2010 to no longer require them in most cases.)

2010 has seen an unprecedented level of change in Turkish immigration law, both in procedures and details of adjudication criteria. Late in the year, the implementation of the online filing system caused a tremendous increase in adjudication time and formal "requests for further documentation." It is hoped that in 2011, many of the above changes will be integrated fully so that adjudication will return to a smoother process.

The communiqué is available at
<http://www.yabancalismaizni.gov.tr/tr/index.html>.

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New Publications and Items of Interest

New E-Verify newsletter. U.S. Citizenship and Immigration Services has published the first issue of *E-Verify Connection*, available at <http://www.uscis.gov/USCIS/Verification/E-Verify/Publications/E-Verify-Connection.pdf>.

ICE seeks to remove the wrong people. TRACImmigration reports that immigration courts are rejecting a significant and increasing number of cases in which Immigration and Customs Enforcement (ICE) has sought to remove individuals from the U.S., according to an analysis of recent case-by-case government data. Key findings include:

- During the last three months of fiscal year (FY) 2010, the rejection rate of ICE requests for removal was nearly one out of three, or 31 percent. This turndown rate is up from one out of every four 12 months earlier.
- For all of FY 2010, some courts turned down ICE removal requests more than half of the time. Among them were the immigration courts in New York City (70% turned down), Oregon (63% turned down), Los Angeles (63% turned down), Miami (59% turned down) and Philadelphia (55% turned down).

- Considering the records for the last five years, immigration courts determined that more than a quarter of a million individuals for whom ICE sought removal were entitled to remain in the U.S.

The report is available at <http://trac.syr.edu/immigration/reports/243/>.

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Member News

Charles Kuck (bio: <http://www.abil.com/lawyers/lawyers-kuck.cfm>) has published a new blog entry, "Obama Is To Blame for the Failure of Immigration Reform," which argues that the Obama administration and Democrats failed to advocate sufficiently for the DREAM Act. The blog is available at <http://musingsonimmigration.blogspot.com/2010/12/obama-is-to-blame-for-failure-of.html>.

Mr. Kuck was reported on or quoted recently in the *Wall Street Journal* (<http://online.wsj.com/article/SB10001424052748704098304576021860881102514.html>), the *Atlanta Journal-Constitution* (<http://www.ajc.com/news/georgia-politics-elections/georgia-takes-action-on-774349.html>), and the *PoliJAM Times* (http://www.polijam.com/index.php?option=com_content&view=article&id=44338:immigration-crackdown-creates-backlog&catid=53:us&Itemid=29). In the *AJC* article on proposed Georgia immigration enforcement legislation patterned after the new Arizona law, Mr. Kuck said, "Let's not get carried away with some plan that doesn't solve any problems, creates more chaos than it solves, doesn't have any long-term solution, and they don't have the money to enforce."

Ron Klasko's (bio: <http://www.abil.com/lawyers/lawyers-klasko.cfm>) firm, Klasko, Rulon, Stock & Seltzer, LLP, has launched a new micro-website with information on non-PERM immigration options and self-petition green cards for scientists, researchers and clinicians. It provides extensive information on Extraordinary Ability (EA), National Interest Waiver (NIW) and Outstanding Researcher/Professor (OR/P) petitions. It also includes information on nonimmigrant visa issues, such as understanding the J-1 home residency requirement and obtaining a waiver, as well as using the O-1 as a bridge to a waiver. The site also provides important information relating to maintaining valid nonimmigrant status while the permanent residence application is pending. See <http://www.eb1immigration.com/>.

Cyrus Mehta (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm>) has published a new blog entry, "Consequences of Visa Bulletin Cutoff Date Retrogression Under the Child Status Protection Act," which discusses the

impact of the retrogression of visa priority dates on those who are near 21 years old. The blog is available at <http://cyrusmehta.blogspot.com/2010/12/consequences-of-visa-bulletin-cutoff.html>. He also recently co-authored the blog entry, "Keeping Hope Alive: President Obama Can Use His Executive Power Until Congress Passes the DREAM Act," available at <http://cyrusmehta.blogspot.com/2010/12/keeping-hope-alive-president-obama-can.html>. Mr. Mehta also co-authored an article, "Keeping Track: Select Issues in Employer Sanctions and Immigration Compliance," available at [http://www.abil.com/articles/ABIL%20Articles%20-%20I-9%20-%20Employer%20Sactions%20&%20Immigration%20Compliance%20\(Mehta\).pdf](http://www.abil.com/articles/ABIL%20Articles%20-%20I-9%20-%20Employer%20Sactions%20&%20Immigration%20Compliance%20(Mehta).pdf).

Angelo Paparelli (bio: <http://www.abil.com/lawyers/lawyers-paparelli.cfm>) has published a new blog entry, "The 2010 Nation of Immigrators Awards - The IMMIs," which takes a look back at "365 days of immigration dysfunction - American style." The blog is available at <http://www.nationofimmigrators.com/?p=375>. He also recently published "Immigration DREAMers and the Way Forward: An Open Letter to President Obama," available at <http://www.nationofimmigrators.com/?p=374>. Mr. Paparelli may be followed on Twitter at <http://twitter.com/angelopaparelli>.

Stephen Yale-Loehr (bio: <http://www.abil.com/lawyers/lawyers-loehr.cfm>) was quoted in a December 22, 2010, Reuters article about the EB-5 immigrant investor program. Mr. Yale-Loehr noted that properly administered, the EB-5 program benefits the U.S. and investors in four ways. "No. 1, it's a win for the U.S. businesses that might not be able to finish a project but for foreign financing.... No. 2, it's a win for the foreign investor, obviously, because they get a green card out of it. No. 3, it's a win for the U.S. taxpayer because they are seeing the benefits of an increase in economic activity at no expense ... and No. 4, it's a win for U.S. workers because jobs are being created." The article is available at <http://ca.reuters.com/article/topNews/idCATRE6BL2KJ20101222>.

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Government Agency Links

Follow these links to access current processing times of the USCIS Service Centers and the Department of Labor, or the Department of State's latest Visa Bulletin with the most recent cut-off dates for visa numbers:

USCIS Service Center processing times online:
<https://egov.uscis.gov/cris/processTimesDisplay.do>

Department of Labor processing times and information on backlogs:
<http://www.foreignlaborcert.doleta.gov/times.cfm>

Department of State Visa Bulletin:
http://travel.state.gov/visa/bulletin/bulletin_1360.html

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The Alliance of Business Immigration Lawyers (ABIL) offers a single point of contact for customer needs, news alerts, staff training and other programs that benefit clients through the collaboration of more than 150 member attorneys and their 400+ staff. Corporate counsel, human resource professionals, in-house immigration managers and other corporate decision-makers turn to ABIL attorneys for outstanding legal skills and services. ABIL's work also includes advocating for enlightened immigration reform, providing speakers and media sources, presenting conferences, publishing books and articles on cutting-edge immigration topics, and sharing best practices, all with the ultimate goal of offering value-added services to business immigration clients.

The Alliance of Business Immigration Lawyers' Web site is:
<http://www.abil.com/>.

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