



Immigration Insider

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- **2. USCIS Revises Permanent Residence Application, Changes Filing Locations** - USCIS has posted a revised I-485 and changed the filing locations.
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- **4. ETA Announces 2010 Adverse Effect Wage Rates and Maximum Meal and Travel Charges for H-2A Agricultural Worker Employers** - The H-2A AEWR is based on USDA data.
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Details...

1. USCIS Changes Filing Location for Employment Authorization Application

U.S. Citizenship and Immigration Services (USCIS) has revised filing instructions and addresses for the Application for Employment Authorization (Form I-765). The change of filing location is part of an overall effort to

transition the intake of some benefit forms from Service Centers to USCIS Lockbox facilities, USCIS noted.

Applicants must now submit the I-765 to one of the USCIS Lockbox facilities or the USCIS Vermont Service Center, based on the classification under which they are filing. Detailed guidance can be found in the updated I-765 instructions. The Service Centers will forward incorrectly filed applications to the USCIS Phoenix and Dallas Lockbox facilities until March 26, 2010. After that date, applications incorrectly filed at USCIS Service Centers will be returned to the applicant, with a note to send the application to the correct location.

When filing the I-765 at one of the USCIS Lockbox facilities, the applicant may elect to receive an e-mail and/or text message notifying him or her that the application has been accepted. The applicant must complete an E-Notification of Application/Petition Acceptance (Form G-1145) and attach it to the first page of the application.

Form I-765 may be electronically filed (e-filed) with USCIS when submitted under certain categories.

The USCIS notice is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=3ca0808dfb107210VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>. The form is available at <http://www.uscis.gov/files/form/I-765.pdf>. For instructions, see

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=73ddd59cb7a5d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=7d316c0b4c3bf110VgnVCM1000004718190aRCRD> and <http://www.uscis.gov/files/form/i-765instr.pdf>.

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2. USCIS Revises Permanent Residence Application, Changes Filing Locations

U.S. Citizenship and Immigration Services (USCIS) announced on February 25, 2010, that it has posted a revised Application to Register Permanent Residence or Adjust Status (Form I-485) and changed the filing locations.

Beginning February 25, 2010, most applicants must submit the I-485 to a USCIS Lockbox facility, depending on the eligibility category under which they are filing, as provided in the form instructions. USCIS Service Centers will forward all I-485 applications to the appropriate Lockbox facility until

March 29, 2010. USCIS will accept previous versions of the I-485 until March 29, 2010. After that date, USCIS will only accept the I-485 dated "12/03/09." After the transition period, the Service Centers will return any incorrectly filed I-485 with instructions to send the application to the correct location.

USCIS said that applicants should not concurrently file an I-485 with an Immigrant Petition for Alien Worker (Form I-140) at a USCIS Lockbox facility. Applicants should refer to the I-140 filing instructions for information on how to file forms concurrently.

When filing the I-765 at one of the USCIS Lockbox facilities, the applicant may elect to receive an e-mail and/or text message notifying him or her that the application has been accepted. The applicant must complete an E-Notification of Application/Petition Acceptance (Form G-1145), and attach it to the first page of the application.

The revised form is available at <http://www.uscis.gov/files/form/i-485.pdf>.

The announcement is available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=29d841959f607210VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD>.

Instructions and related links are available at

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=3faf2c1a6855d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=dd346d26d17df110VgnVCM1000004718190aRCRD>.

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3. Kerry, Lugar Introduce Immigrant Entrepreneur Bill

Sens. John Kerry (D-Mass.) and Richard Lugar (R-Ind.), the chairman and ranking member of the Senate Foreign Relations Committee, introduced legislation on February 24, 2010, to help immigrant entrepreneurs secure visas to the United States.

The "StartUp Visa Act of 2010" would allow an immigrant entrepreneur to receive a two-year visa under a new EB-6 category, drawing from existing EB-5 visas, if he or she can show that a qualified U.S. investor is willing to dedicate a minimum of \$250,000 to the immigrant's startup venture. After proving that he or she has secured initial investment capital and if, after two years, the immigrant entrepreneur can show that he or she has generated at least five full-time jobs in the U.S., attracted \$1 million in additional investment capital, or achieved \$1 million in revenue, he or she would receive permanent resident status.

Sen. Kerry noted, "Everywhere Dick Lugar and I travel for the Foreign Relations Committee, we see firsthand the entrepreneurial spirit driving the economies of our competitors." Sen. Lugar said the U.S. "should channel the power of innovative thinkers from around the world and American investors towards creating jobs and encouraging economic growth and future prosperity."

More than 160 U.S. venture capitalists have endorsed the senators' proposal. A press release announcing the bill's introduction is available at <http://lugar.senate.gov/press/record.cfm?id=322460>.

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4. ETA Announces 2010 Adverse Effect Wage Rates and Maximum Meal and Travel Charges for H-2A Agricultural Worker Employers

The Department of Labor's Employment and Training Administration (ETA) has announced the new 2010 Adverse Effect Wage Rates (AEWRs) and the 2010 maximum allowable meal and travel subsistence charges applicable to employers seeking to employ H-2A nonimmigrant workers to perform agricultural labor in the United States on a temporary or seasonal basis. The AEWR serves as the floor for the agricultural wage rates under the H-2A program.

The ETA noted that the H-2A AEWR is based on USDA data compiled through its Farm Labor Survey (FLS) Reports. The changes take effect March 15, 2010.

The ETA's announcement, which includes a state-by-state table of AEWRs for 2010, is available at <http://edocket.access.gpo.gov/2010/pdf/2010-3078.pdf>.

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5. ICE Updates List of SEVP-Approved Schools

U.S. Immigration and Customs Enforcement has released the latest updated list of Student and Exchange Visitor Program approved schools. The list is available at <http://www.ice.gov/doclib/sevis/pdf/ApprovedSchools.pdf>.

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6. ABIL GLOBAL: News from Australia, Mexico, Canada

Australia. The Australian government has announced it is reforming the permanent skilled migration program to ensure that it is more responsive to

the needs of industry and employers and better addresses the nation's future skill needs.

The reforms will deliver a demand- rather than supply-driven skilled migration program that meets the needs of the economy in sectors and regions where there are shortages of highly skilled workers, such as healthcare, engineering, and mining. The major reforms to the skilled migration program include:

1. 20,000 would-be migrants will have their applications cancelled and receive a refund

All offshore General Skilled Migration applications filed before September 1, 2007, will have their applications withdrawn. These are people who applied overseas under easier standards, including less rigorous English language skill and work experience requirements. An estimated 20,000 people fall into this category.

The Department of Immigration and Citizenship (DIAC) will refund their visa application charges at an estimated cost of A\$14million.

2. The list of occupations in demand will be tightened so that only highly skilled migrants will be eligible to apply for independent skilled migration visas

The wide-ranging Migration Occupations in Demand List (MODL) dating from September 2009 will be revoked immediately. The list is outdated and contains 106 occupations, many of which are less-skilled and no longer in demand.

A new and more targeted Skilled Occupations List (SOL) will be developed by an independent body, Skills Australia, and reviewed annually. It will be introduced mid-year and will focus on high-value professions and trades.

The Critical Skills List introduced at the beginning of 2009, which identified occupations in critical demand at the height of the global financial crisis, will also be phased out.

3. The points test used to assess migrants will be reviewed to ensure that it selects the best and brightest

Potential migrants gain points based on their qualifications, skills and experience, and proficiency in English. The current points test puts an overseas student with a short-term vocational qualification gained in Australia ahead of a Harvard-educated environmental scientist.

A review of the points test used to assess General Skilled Migration applicants will consider issues including whether some occupations should warrant more points than others, whether sufficient points are awarded for work experience and excellence in English, and whether there should be points for qualifications obtained from overseas universities.

The review will be reported to the government later this year.

4. Certain occupations may be capped to ensure that skill needs are met across the board

Amendments to the Migration Act will be introduced this year to give the Minister the power to set the maximum number of visas that may be granted to applicants in any one occupation. This will ensure that the Skilled Migration Program is not dominated by a handful of occupations.

5. Development of state and territory-specific migration plans

Individual state and territory migration plans will be developed so they can prioritize skilled migrants of their own choosing. This recognizes that each state and territory has different skill requirements. For example, Western Australia may have a shortage of mining engineers, while Victoria may need more architects. Under the new priority processing arrangements, migrants nominated by a state and territory government under their State Migration Plan will be processed ahead of applications for independent skilled migration.

Senator Chris Evans, the Minister for Immigration and Citizenship, has said the new arrangements will give first priority to skilled migrants who have a job to go to with an Australian employer. For those who do not have an Australian employer willing to sponsor them, the bar is being raised.

The government has acknowledged that the changes will affect some overseas students currently in Australia intending to apply for permanent residence. International students who hold a vocational, higher education or postgraduate student visa will still be able to apply for a permanent visa if their occupation is on the new SOL. If their occupation is not on the new SOL, they will have until December 31, 2012, to apply for a temporary Skilled Graduate 485 visa on completion of their studies, which will enable them to spend up to 18 months in Australia to acquire work experience and seek sponsorship from an employer.

The changes will not affect international students coming to Australia to gain a legitimate qualification and then return home.

Mexico. On January 29, 2010, Mexico's National Migration Institute published its Manual of Criteria and Migration Procedures ("Manual de Criterios y Trámites Migratorios del Instituto Nacional de Migración" or "Manual"). The Manual will be enforced as of May 1, 2010, throughout the 32 delegations of the National Migration Institute across the country.

The intention of the National Migration Institute is to clarify, streamline, and simplify processing requirements for each immigration category. Applications currently being processed and those filed before May 1, 2010, will be analyzed and processed based on current policies, practices, and procedures.

Some of the most relevant aspects of the Manual include:

- All migratory forms for tourists, business visitors, and technical visitors with lucrative activities, who intend to stay in Mexico for up to 180 days, will be replaced by a single "FMM" (Forma Migratoria Múltiple) form. The FMM will serve as evidence of the foreign national's immigration status while in Mexico;
- The business visitor criteria are clearly defined. The new FMM form has an option for choosing the purpose of the visit as business (negocios), for which once the foreign national enters Mexico, the immigration officer will grant a 180-day stay.
- There are three options that the immigration officer might mark that will grant the foreign national 180 days: (a) Business (Visitante Persona de Negocios), (b) Visitor with Lucrative Activities (Visitante con Actividades Lucrativas), and (c) Visitor with Non-Lucrative Activities (Visitante con Actividades No Lucrativas). Any of these allow the foreign national to visit Mexico for business, either for working purposes or only for meetings.
- If the purpose of the business visit will extend the stay beyond 180 days, the foreign national will have to file for a change of immigration status to obtain the corresponding FM3.
- The ABTC (Asia-Pacific Economic Cooperation business travel card) criteria are clearly defined.
- In the following weeks, the National Migration Institute will publish the formats of the new migration cards that will replace the FM2 and FM3 booklets. Changes of activity, domicile, marital status, and similar information will no longer have to be annotated on the migratory document, thereby allowing a foreign national to travel in and out of

Mexico while a change of status/conditions application is in process without having to request an exit and re-entry permit.

- Consular posts will no longer issue FM2 or FM3 booklets. Instead, the consular post will place a visa sticker on the foreign national's passport, upon receipt of the petition's approval from the National Migration Institute. The sticker will allow entry into Mexico within 365 days of issuance. Upon entry, the foreign national must obtain the new FM2 or FM3 migration card within 30 days.

Canada. Canada welcomes approximately 250,000 new immigrants each year, which represents the highest per capita immigration in the world.

The majority of those who immigrate to Canada apply to do so under Canada's Federal Skilled Worker Class Program or under one of the Provincial Nominee Programs for those chosen/selected by one of Canada's provinces or territories.

Canada's Federal Skilled Worker Class Program is a points-based system. Points are awarded for education, language abilities (English and French), work experience, age, arranged employment, and adaptability.

Until 2008, any applicant who was awarded the minimum required 67 points would have been accepted as long as they and their family members had no significant medical, criminal, or security problems. Since 2008, Canada has imposed an additional requirement of having at least one year of full-time work experience in one of 38 occupations (financial managers, computer and information systems managers, accountants, physicians, and others) for those not already working in Canada or those who do not have an "arranged employment offer with a Canadian employer."

Other options to consider for those interested in Canadian permanent residence who are not on Canada's Federal Skilled Worker Class Program "38 occupations list" are the province of Quebec's Skilled Worker Class Program and the province of Alberta's U.S. Visa Holder Category Program.

Quebec's Skilled Worker Class Program does not have a restrictive occupations list. Fifty-five points (for a single person) and 63 points for a married person are the minimum required points to be accepted for Canadian permanent resident status under the Quebec program, as of the most recent legislative changes of October 14, 2009. Points are awarded by Quebec (which accepts approximately 55,000 immigrants per year) principally for education, work experience, age, language abilities (oral French and oral English), visits to Quebec, family in Quebec, children's and spouse's educations, age, and oral French abilities. If a foreign national has

some oral French abilities, or can readily acquire them, the Quebec Skilled Worker Class Program should be considered.

Alberta's U.S. Visa Holder Category Program requires the foreign national to:

1. Be currently working in the United States with valid H-1B, H-1B1, H-1C or E3 status;
2. Have a minimum of one year of work experience in the U.S. in one of the qualifying visa categories; and
3. Be on the Alberta Occupations Under Pressure list of 72 occupations.

Canada welcomes applicants and their spouses who are in common-law or same-sex relationships.

Canada may be an option for those in the U.S. or elsewhere with precarious or soon expiring status.

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New Publications and Items of Interest

E-Verify unauthorized worker detection rate. Westat has released an evaluation of the E-Verify program, which finds that "since the inception of E-Verify it has been clear that many unauthorized workers obtain employment by committing identity fraud that cannot be detected by E-Verify." The report puts E-Verify's inaccuracy rate for detecting unauthorized workers at approximately 54 percent.

The report is available at http://www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf. USCIS's synopsis of the key findings and program implications is available at <http://www.uscis.gov/USCIS/Native%20Docs/Westat%20Evaluation%20of%20the%20E-Verify%20Program.pdf>.

High-skill immigration top blogger choice for economic recovery. The Kauffman Foundation has released the results of a survey of leading economics bloggers showing, among other things, that 63 percent support an increase in high-skill immigration to speed economic recovery. The report is available at http://www.kauffman.org/uploadedFiles/econ_blogger_outlook_q1_2010.pdf

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Recent News from ABIL Members

Cyrus Mehta's (bio: <http://www.abil.com/lawyers/lawyers-mehta.cfm>) new blog, "Halcyon Days in H-1B Visa Processing," discusses a memo issued in January 2010 (Neufeld Memo) and its effect on H-1B workers, especially beneficiaries of an approved I-140 petition under the EB-2 category from India or China, or an EB-3 from any country (especially India), who must file many extensions of H-1B status while waiting endlessly for immigrant visa availability. The blog is available at <http://cyrusmehta.blogspot.com/2010/02/halcyon-days-in-h-1b-visa-processing.html>. The Neufeld Memo is available at <http://www.uscis.gov/USCIS/Laws/Memoranda/2010/H1B%20Employer-Employee%20Memo010810.pdf>.

Angelo Paparelli's (bio: <http://www.abil.com/lawyers/lawyers-paparelli.cfm>) new blog, "Immigration Tsunami Washes Over Staffing and Consulting Firms," also discusses the Neufeld Memo. The blog notes that not only does the memo negatively affect entrepreneurs who hold majority or greater stakes in start-up and emerging companies, it also damages important sectors of the U.S. economy. The blog is available at <http://blogs.ilw.com/angelopaparelli/2010/02/my-entry.html>.

Mr. Paparelli was quoted in the February 25, 2010, edition of the *Los Angeles Daily Journal* in comments about the newly introduced "StartUp Visa Act of 2010." Mr. Paparelli said he liked the idea but expressed concerns that the program would be "plagued by some of the same problems we have seen with the EB-5 program." For example, he noted, foreign investors complain that their applications are denied for unclear reasons and permanent residence is often delayed.

Robert Loughran (bio: <http://www.abil.com/lawyers/lawyers-loughran.cfm>) recently co-authored an article published in the February 22, 2010, edition of the *Texas Lawyer*. The article, "Know the Procedural Ins and Outs to Avoid Immigration Pitfalls," advises on enforcement and deterrence efforts affecting employers, including a focus on terrorism and homeland security issues, along with site visits, audits, requests for additional evidence, and the interlinking of databases and information-sharing.

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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/frvi/bulletin/bulletin_1360.html

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The Alliance of Business Immigration Lawyers (ABIL) is an entity that offers a single point of contact for customer needs, news alerts, staff training and other programs that benefit the client through the collaboration of the 140 member attorneys and their 460 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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