



FROM THE EDITOR'S DESK

Summer is rapidly coming to a close as evidenced by the U. S. Congress taking their annual summer recess. There have been lots of interesting things happening this month and many changes have also taken place. One of the biggest changes that has created a buzz all over the news and blogosphere is the \$2000 fee hike for certain H1B and L1 petitions. The United States Congress, in a largely bi-partisan vote, passed a bill which was signed by President Obama on August 13, 2010, which, among other things, imposes an additional \$2000 H1B filing fee and \$2250 L1 filing fee for certain companies that file H1B and L1 applications on behalf of foreign professional workers. This filing fee is in addition to the normal filing fees.

Specifically, the bill would increase total filing and fraud prevention fees by an incredible \$2000 to \$2250 for petitioners with a U.S. workforce of more than 50 percent [H1-B](#) or [L-1](#) nonimmigrants. The provision would be applicable to employers with 50 or more employees in the United States. The bill is designed to provide \$600 million in emergency funds to increase security along our borders with Mexico, hiring more than new 1,000 border patrol and immigration enforcement officers, and increasing unmanned drone surveillance operations in the region. Many Senators returned to Washington DC from their August recess to vote on the bill.

The U.S. House of Representatives passed the legislation to toughen U.S.-Mexico border security despite anger in India (at whom the legislation appears to be aimed) at the steep increases in work visa fees proposed to pay for the new measures. There was some anticipation about the consolidation or any amendments to the bill, but nothing came about. **Indian IT companies will be the worst affected by this bill, costing them between \$200 to \$250 million per year.** Though it seems very unfair from a trade practice standpoint, the U.S. defends it saying that they want to encourage the hiring of U.S. workers and the

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growth of companies working in the U.S. with more local workers, and to create jobs. The bill took effect immediately upon being signed by the President.

On the other side of the immigration debate the Obama Administration is considering ways that it could impact immigration relief without Congressional approval - providing some options, should comprehensive immigration reform legislation not pass.

An internal memo to Alejandro N. Mayorkas, the Director of USCIS, from the Offices of Chief Counsel and Policy and Strategy, lay out some suggestions that USCIS might undertake within the current structure of the law without having to wait for Congress to pass legislation. Some of the key suggestions include the following:

1. *Provide work authorization for [H-4](#) dependent spouses if the [H-1](#) applicant has an application for permanent residence and has extended beyond the 6 year limit.* Currently H-4 dependents have to wait for the filing of an [I-485](#) application to get work authorization, however, that can't be done unless the priority date is current.
2. *Expand the "dual intent" doctrine to non-immigrants such as [TN](#)'s, [F-1](#), [O](#), [P](#) and [E](#) visa holders.*
3. *Create a grace period ranging from 45 to 90 days for most of the non-immigrant categories.*
4. *Eliminate unlawful presence (3 year and 10 year bar) for adjustment of status applicants.* This would allow applicants who are subject to the bar on re-entry to freely travel and re-enter the U.S. to resume their application.
5. *Expand premium processing to all employment-based cases.* USCIS noted that they do not have a current backlog of cases so they are equipped to expand their premium processing unit.
6. *Utilize deferred inspection for applicants whose removal is not in the public interest.* This allows a "stay" in the U.S. to buy time for the applicant to have some form of legislative relief in the future.
7. *Expand the [EB-5](#) investor visa program.* This program provides permanent residence to foreign nationals who invest in a U.S. business that creates at least 10 jobs, however, the program has been underutilized. The USCIS views this program as an important tool to revitalize the U.S. economy.
8. *Extend work authorization on EADs when an*

YOUR OPINION

Do you think Senate approved Border Security Bill that will increase the [H1-B Visa](#) and [L-1 Visa](#) fees will increase by \$2000, is a favorable verdict?

- a. Yes
- b. No
- c. Can't say

[Cast Your Vote](#)

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IMMIGRATION QUIZ

Win a FREE Online Consultation!

Submit your answer to the query below. The best response will be published in the next **Immigration Monitor** and the winner will receive a **FREE Online Consultation** from an Experienced VisaPro Immigration Attorney during the month of September 2010.

Sonia is getting married to Paul who is a French citizen. Paul is currently in the U.S. on an [E-2](#) Investor Visa. Sonia is a citizen of India, which is not a treaty country. Does it mean that she cannot accompany Paul to the U.S. on E-2 dependant visa?

[Submit Your Answer](#)

extension is filed. This would allow automatic 240-day work authorization for an applicant who files an EAD extension before the current one expires. Currently the renewed [EAD](#) must be approved by the time the current EAD one expires for the foreign national to continue to lawfully work.

USCIS believes these administrative options are immediately at their disposal or can be quickly implemented through notice in the Federal Register based upon current authority. There is no word yet whether USCIS will implement any of these suggestions. Be assured that we will report on any forward movement concerning the above administrative policy changes and continue to keep you informed.

Other Developments in Immigration Law

[USCIS Changes Filing Location for Form I-129F, Petition for Alien Fiancé\(e\)](#)

USCIS on August 3, 2010 announced a change in filing location instructions and addresses for the Petition for Alien Fiancé(e) (Form I-129F). Beginning Aug. 3, 2010 all Form I-129F petitions being filed by a U.S. citizen on behalf of a fiancé(e) or spouse must be submitted to the USCIS Dallas Lockbox facility. The Vermont and California Service Centers will forward incorrectly filed petitions to the USCIS Dallas Lockbox for a period of 45 days until Sept. 17, 2010. After Sept. 17, 2010, petitions and fees submitted at the Service Centers will be returned to the applicant, with a note advising them of the correct filing location.

[Fee for Visa Waiver Program Increases from September 8](#)

Beginning September 8, 2010, foreign nationals planning to enter the United States under the Visa Waiver Program (VWP) will need to pay a new fee of US\$14.00 when they submit an application for permission to travel through the Electronic System for Travel Authorization (ESTA).

[State Department Announces Online Immigrant Visa Application](#)

The US Department of State (DOS) has announced Form DS-260, a new, completely electronic application for foreign nationals seeking immigrant visas at U.S. consulates abroad. Form DS-260 is expected eventually to replace Form DS-230, the paper-based immigrant visa application.

Immigration
Question?

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Winner of the Immigration Quiz - July 2010:

Simbiat Monsur

The Question:

Keavy Ashly has been a permanent resident of the U. S. for the past three and half years. Due to her parents' health issues, she had to travel to her home country three times but she never stayed beyond 6 months. Can Keavy apply for [citizenship](#)?

The Winning Response:

No, Keavy may not be eligible to apply for US Citizenship as she has only been a permanent resident for the past three and half years and she has gone to her home country three times. She could apply if: She is foreign national with 5 years permanent residence in the U. S. and physically present in the U.S. for at least half of that period with no periods of absence over six months OR She must have been a permanent resident for 3 years, who is currently married to a U.S. citizen, and

Immigration Articles and Other Fun Stuff

Now for the regulars - this month's **Immigration Article** entitled '*Overstay, Out-of-Status and Unlawful Presence: What Do These Terms Mean and How Can They Affect You?*' tells the meaning of the terms - Overstay, Out-of-Status and Unlawful Presence and also explains how they might affect you. Also check out our **In Focus** section for this month, '*When is Your Priority Date Becoming Current: Should You Check USCIS Processing Times or DOS Visa Bulletin?*' that will help you understand the differences between the USCIS Processing Times and DOS Visa Bulletin, their significance and how do they relate.

Every month we introduce a new and interesting question for our opinion poll. Last month's poll results indicate that **55.56%** of the respondents believe that USCIS will not receive 65,000 H-1B petitions before the end of this fiscal year. We appreciate that people take interest in the opinion question and cast their vote to give us their feedback. Keep it up! And continue to cast your vote to express **Your Opinion**.



We congratulate **Simbiat Monsur** for winning last month's **Immigration Quiz**. Again, we received a significant number of responses from our readers, who talked about various solutions to support their

position, but **Simbiat Monsur** gave the correct answer and won a free online consultation to discuss the concerned Immigration issues. So it's time to get ready for this month's quiz. If you know the correct answer your name might be featured in next month's newsletter. All the Best!!!

To ensure you receive your Immigration Newsletter, please add Immigration-Monitor@VisaPro.com to your address book or safe list.

See you next month with a lot more noise from the Immigration World!

Christine

has been married to the same U.S. citizen for the past 3 years.

Simbiat Monsur receives a **FREE Online Consultation** from an Experienced VisaPro Immigration Attorney during the month of August 2010.

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VisaPro Attorney
Mr. Thomas Joy
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LATEST NEWS

[H-1B Cap Count Increases Further; USCIS Received 33,900 H-1B Cap-subject Petitions](#)

As of August 20, 2010, USCIS has received approximately 33,900 H-1B cap subject petitions and approximately 12,600 petitions qualifying for the advanced degree cap exemption. USCIS will continue to accept both cap subject petitions and advanced degree petitions until a sufficient number of H-1B petitions have been received to reach the statutory limits.

[USCIS Implements H-1B and L-1 Fee Increase](#)

On Aug. 13, 2010, President Obama signed a, which contains provisions to increase certain H-1B and L-1 petition fees. The law requires the submission of an additional fee of \$2,000 for certain H-1B petitions and \$2,250 for certain L-1A and L-1B petitions postmarked on or after Aug. 14, 2010, and will remain in effect through Sept. 30, 2014.

[DOL Bans Asian Journal from the H-1B Program](#)

The U.S. Department of Labor announced today that it has debarred Asian Journal Publications from using the H-1B visa program to hire temporary workers. An investigation conducted by the department's Wage and Hour Division, determined that the employer did not properly pay the workers and misrepresented facts on the Labor Condition Application filed with the department's Employment Training Administration requesting approval to hire the workers. The debarment will remain in effect until July 30, 2012.

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IN FOCUS

XML

When is Your Priority Date Becoming Current: Should You Check USCIS Processing Times or DOS Visa Bulletin?

It is often difficult and confusing to understand the USCIS Processing Times and DOS Visa Bulletin and their usage. Most of the people think that the USCIS Processing Times and Visa Bulletin are same, but they are not. Processing times for petitions and applications are very different from the waiting times or priority dates. One needs to understand the difference between the two and the significance of both the Processing Times and Visa Bulletin so that they can correctly estimate the time it may take for their relative or employee to come to the U.S. In this article, we make an attempt to help you understand the differences between the USCIS Processing Times and DOS Visa Bulletin, their significance and how do they relate.

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IMMIGRATION ARTICLE XML

Overstay, Out-of-Status and Unlawful Presence: What Do These Terms Mean and How Can They Affect You?

It is vitally important that to understand the differences between Overstay, Out-of-Status (Unlawful Status), and Unlawful Presence. By understanding these terms you can take necessary measures not to fall into any of these categories. The consequences of overstay, out-of-status and unlawful presence are very stiff and the penalties imposed are very severe. In this article, we discuss the meaning of the terms – Overstay, Out-of-Status and Unlawful Presence and also learn how they might affect you.

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DISCUSSION CORNER

[Deported can she come back?](#)

By Green Bear92

[YAHOOO!!!! I finally got my green card](#)

By Friendly Else

[I130 Status Change](#)

By Synack

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How to beat the Cap?

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QUESTIONS AND ANSWERS

Q1. [I-485](#) approval letters received for me, my wife and my daughter on June 24, 2010. Wife and daughter are currently on vacation in India and have valid advance parole to re-enter the country until Jan 23, 2011. They are coming back on Aug 23, 2010. Questions:

- 1. Can they re-enter the U.S. on Aug 23, 2010 with the Advance Parole document that they currently carry (valid until Jan 23, 2011)?**
- 2. If the plastic card is received prior to Aug 23, 2010 and I can send them their plastic green cards via Fed-Ex to India, can they enter the U. S. on Aug 23, 2010 using the new plastic Green Cards?**

Ans. If you receive the actual green cards (the plastic card) in the mail before your wife and daughter are set to return to the U. S. you should forward them to India so

they can be used for entry. If you do not receive them your wife and daughter can use the advance parole for entry. Either way they should not have any difficulty in returning.

The USCIS has been pretty good at getting the cards out quickly once the I-485 has been approved so it is very likely that you will get them in time to forward them to India.

Q2. I'm here in the U.S. since 2001. My wife is U.S. citizen. We married in May 2007 and I got two year conditional Green Card. In June 2009 my petition to remove the conditions on the residence was DENIED by the USCIS. I was very disappointed and forgot the case since then. I have also some problems with my wife and in December 2009 I moved to other address. Is it possible for me to get the Green Card based on marriage?

GOT A QUESTION?

If you have a short, simple query on immigration to the U.S., send your questions to us. We will select and answer a few of the queries in every issue.

Note: Responses posted in this section provide only general information. Since immigration law is a complex matter, please [consult](#) an immigration attorney before acting upon any responses provided.

[Ask Your Question](#)

Ans. When a Form [I-751](#), Petition to Remove the Conditions, is denied the case is usually referred to the Immigration Court, and you should have gotten a notice for a hearing. When a Form I-751 is referred to the Immigration Court you get an opportunity to renew your petition, and try again to show that you had a valid marriage. If you have not received any notices you will need to follow up on that and make sure that you have not missed any hearings and been found deportable in absentia.

If you are now legally separated or divorced from your wife you may be able to file a new I-751 under one of the alternate provisions of the law. A complete review of the facts of your case would be required to determine if that would be possible.

If you have not given the USCIS a change of address you need to be sure to do that right away. Without the change of address you may not get any of the notices that may come to you, and if you have moved and not given them the new address you cannot challenge any action taken based on a notice you did not receive.

[More Q&A](#)

SUCCESS STORIES

"The VisaPro team handled our [L-1B Visa](#) application professionally and promptly.

Detailed knowledge of the immigration process was evident and excellent guidance was provided at every step. Some unusual circumstances in our application were thoroughly analyzed and options for moving forward clearly explained.

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Ian Turnbull, Chief Operating Officer

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