

FROM THE EDITOR'S DESK

VisaPro wishes you **Happy Holidays** and a prosperous **Happy New Year!!**



It is the last month of the year and the end of 2010 DV Lottery program.

Other than final flurry of DV 2010 lottery filings December was marked as a period of relative tranquility in the immigration landscape. The Diversity Visa Lottery program for 2010 ended on December 1, 2008. Approximately 10 million online applications were received from the six geographic regions included in the lottery. A maximum of seven percent of the 55,000 DV visas are available to persons born in any single country. Now we wait for the results to know the names of those fortunate ones who win the [Green Card Lottery](#) for 2010. Who knows you might be one. Everyone is excited and eager but, we all have to wait for results.

The USCIS has released a reminder informing prospective employers and potential employees that the [H-1B](#) "filing season" begins on April 1, 2009. If excess H-1B petitions are received (as has been the case for the past several years), USCIS will use a computerized lottery to choose the petitions that will be awarded a visa number. Prudent employers should plan to file their cases so they arrive at the USCIS on April 1 to ensure that they are included in the selection process. The USCIS, therefore, advises employers to begin their employment planning as soon as possible so that H-1B petitions can be prepared well in advance of the April 1 filing date. Additionally, employers should consider obtaining certified [Labor Condition Applications](#) (LCAs) as soon as possible, especially in light of forthcoming processing changes at the US Department of Labor (DOL). DOL has announced its intent to scrutinize LCAs more closely beginning in early 2009. In the past, labor condition applications were processed very quickly, sometimes in a

Happy Holidays!

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matter of minutes. However, beginning in 2009, DOL is expected to take up to seven days (or more) to process LCAs.



If retirement is in your near future, and spending those retirement years in the US is part of your plan, then there's good news for you. Real Estate agents in the United States hope that the

impending change of government will help to generate renewed enthusiasm for the 'Silver Card,' a retirement visa which would allow foreigners to spend their retirement in the U.S. Some close neighbors, such as **Mexico, Panama, Costa Rica, and Belize**, have a variety of programs designed to encourage international pensioners to settle and buy homes in their countries. However the US offers no simple path for a foreign national to retire to destinations such as Florida or California. A recent study found that 7.5 percent of foreign citizens polled expressed an interest in retiring to the US. This, it is expected, could translate into millions of potential buyers, and would provide a much needed boost for the stagnant housing markets in states such as Florida, California and Colorado. However, even with immigration matters generally high on the agenda in the US, right now the NAR seem to be holding back on the concept. Maybe, the Florida Association of Realtors can use the financial crisis as a springboard to help find a legislator willing to carry the proposal to Congress.

Barak Obama, soon to be the 44th President of the United States, with a view to economic conditions of the country, has initiated certain measures to begin the recovery process. President elect Obama and Senator Joe Biden (the vice-president elect) plan to restore fairness to the US tax code and provide 95 percent of working



Senator Joe Biden

Americans the tax relief they need. Their plan includes creating a new "Making Work Pay" tax credit of up to \$500 per person, or \$1,000 per working family. They will also introduce policies to **provide tax relief for small businesses and startups** by eliminating all capital gains taxes on startup and small businesses. These later policies are designed to encourage innovation and job creation.

YOUR OPINION

Should US increase the number of family-based visas to unite U.S. citizen & permanent residents with family members?

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

[Cast Your Vote](#)

[View Results](#)

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 January 2009.

Does a person coming to the US on [K-1](#) Visa eligible to change his or her visa category?

[Submit Your Answer](#)

Winner of the Immigration Quiz - November 2008:

Monika Sharma

The Question:

Obama and Biden also plan to fight for a trade policy that opens up foreign markets to support good American jobs. They will use trade agreements to spread good labor and environmental standards around the world. We will soon be able to see if their intended reforms come to fruition.



Well, now to the not so good news. The US Immigration and Customs Enforcement (ICE) has released its most current statistics. The statistics show that the deportation of foreign nationals has certainly hit a new peak. The year witnessed a tremendous increase in the number of foreign nationals

deported from the United States, which indirectly indicates that the number of illegal immigrants coming to the United States has continued to increase. Nationwide, deportations have increased as approximately 350,000 immigrants have been sent home through the end of the fiscal year, September 2008, compared with only about 174,000 in the same period in 2004.

Other Developments in Immigration Law:

USCIS to Streamline H-2B Visa Procedures

The USCIS has recently announced that it has submitted to the Federal Register a Final Rule that will change the requirements affecting [H-2B](#) beneficiaries and their employers. The Final Rule will facilitate the process by which employers hire workers to participate in the H-2B visa program. The changes are being proposed in further fulfillment of the commitment made by President Bush's Administration in August 2007, after the failure of comprehensive immigration reform in Congress, to address immigration challenges, including review and improvement of temporary worker visa programs using existing authorities. This final rule supplements the extensive reforms of the H-2B program that are included in the Final Rule published by the Department of Labor.

USCIS Streamlines the H-2A Visa Program

The USCIS has announced changes to the [H-2A](#) visa regulations that will streamline the hiring process of temporary and seasonal agricultural workers. The proposed changes in the H-2A visa program will facilitate the H-2A visa process for employers by removing certain limitations and will further encourage lawful employment in the United States. This rule will also establish a land-border exit system pilot program requiring H-2A workers admitted

Does a person who is already in US on H-1B visa lose his/her status if the spouse comes to US on any other work visa (not as dependent) and start working for his/her visa sponsorer?

The Winning Response:

If your spouse comes to US and begins to work for his or her visa sponsor you may continue to work on your H-1B. Your spouse's visa status does not affect your visa.

Monika Sharma receives a **FREE Online Consultation** from an Experienced VisaPro Immigration Attorney during the month of December 2008.

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through a port of entry participating in the pilot program to also depart through a participating port and to present designated biographic and/or biometric information upon departure.

[USCIS Revises Employment Eligibility Verification \(Form I-9\) Process](#)

The USCIS has submitted an interim final rule that will streamline the Employment Eligibility Verification (Form [I-9](#)) process. The employers must now use the revised Form I-9 for all new hires and to re-verify any employee with expiring employment authorization beginning 45 days after publication in the Federal Register. The current version of the Employment Eligibility Verification (Form I-9) (dated 06/05/2007) will no longer be valid as of 45 days after publication in the Federal Register.

[EADs Extended for Eligible Salvadoran TPS beneficiaries](#)

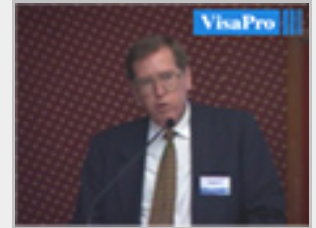
The USCIS on December 12, 2008, announced an automatic extension of the validity of [Employment Authorization](#) Documents (EADs) for eligible Salvadoran TPS beneficiaries for six months through Sept. 9, 2009. This will allow sufficient time for eligible TPS beneficiaries to re-register and receive an Employment Authorization Document (EAD) without any lapse in employment authorization.

Immigration Articles and Other Fun Stuff:

'Are you planning to apply for an H-1B Visa?' If yes, then do you know not all the H-1B Employees are counted towards the CAP? Hold on your breath to read this month's **Immigration Article** which tells you the H-1B Cap limits, the H-1B Cap Exemption, who are subject to it and who exempts from it. Also check out our **In Focus** section for this month which gives you detailed insight of the [L-1B](#) Intra-Company Transferee visa for the 'Professionals with Specialized Knowledge'. If your company is seeking to apply an L-1B for you then this article is worth reading.

Every month we introduce a new and interesting question for our opinion poll. Last month's poll results indicate that approximately 82.14% of the respondents believe that the [Trade-NAFTA](#) workers from Canada or Mexico can seek admission to the United States for a period of three years. 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**.

Wanted to take part in our immigration events, but missed your chance? Check out the informative library of immigration law videos from past conferences.



[More Videos...](#)



We congratulate **Monika Sharma** 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 Monika Sharma gave the correct

answer and won a free online consultation to discuss her 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

RECENT IMMIGRATION EVENTS



VisaPro Attorney
Mr. Thomas Joy
at Bangalore



Consular Interview
Mock Session



Seminar Attendees
at Hyderabad

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LATEST NEWS

[Latest Update: H-2B Count for the Second Half of Fiscal Year 2009](#)

The USCIS, on December 15, 2008, updated the count of H-2B petitions received and counted towards the H-2B cap for the second half of the Fiscal Year 2009. As of December 15, 2008, 18,367 H-2B petitions have been counted towards the H-2B cap of 33,000 for the second half of FY 2009.

[USCIS' New Rule for Nonimmigrant Victims of Human Trafficking and Specified Criminal Activity](#)

The USCIS, on December 08, 2008 announced an interim final rule that will allow "T" and "U" nonimmigrants to adjust their status and become lawful permanent residents. The interim final rule implements the provisions of the Victims of Trafficking and Violence Protection Act of 2000,

and will take effect 30 days after publication in the Federal Register. However, both "T" and "U" nonimmigrants should be in valid nonimmigrant status at the time of application. USCIS can adjust the status of up to 5,000 "T" visa holders annually. This cap does not apply to family members of the principal "T" nonimmigrant status holder. There is no numerical cap on adjustment of status for "U" nonimmigrants.

[Fact Sheet: USCIS Publishes New Rule for Nonimmigrant Victims of Human Trafficking and Specified Criminal Activity](#)

The USCIS has released a set of Q & As immediately after its announcement of an interim final rule that will allow "T" and "U" nonimmigrants to adjust their status and become lawful permanent residents. The interim final rule implements the provisions of the Victims of Trafficking and Violence Protection Act of 2000, and will take effect 30 days after publication in the Federal Register.

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IN FOCUS

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Specialized Knowledge: How the L-1B Can Work For You

The L-1B visa classification has been a useful method for multinational companies to transfer their key employees to the United States to manage the key activities of the business. The L-1 visa certainly has many advantages over other types of nonimmigrant visas however it has its own hurdles also; especially the L-1B visa classification. In the last few years, it has been observed that the government perceives the L-1B visa classification as "vulnerable and susceptible to fraud." Thus, proving the specialized knowledge is often the most difficult hurdle in L-1B visa petitions. This article is designed to explain you the factors that constitute as specialized knowledge and list the requirements that help the employers to establish a strong case for the L-1B visa for their employees.

[Read Full Article](#) | [Read More Articles](#)

IMMIGRATION ARTICLE XML

The H-1B Cap - Who is not subject to it?

We all are well aware of the H-1B cap restriction but most of us aren't aware of the fact that not every H-1B petition is subject to the cap. The H-1B cap is the biggest concern both for prospective employers and proficient employees. While the H-1B cap is currently set by statute at 65,000, there are several exemptions that raise the actual number of new H-1Bs each year. It is highly important that you carefully analyze which H-1B cap exempt category you or your employer call into. This article has been designed to assist the employers and the employees from becoming the victim of the H-1B cap restriction. Go ahead...read the article and enjoy your H-1B filing without falling prey to the H-1B Cap.

PROCESSING TIMES XML

▶ [Visa Bulletin](#)

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DISCUSSION CORNER

[H-1b Transfer \(Offshore \(India\)\)](#)

By Jacobivin

[Change employers after 6yrs H-1B and no I-485](#)

By Banjo3

[AOS Interview - H1B Cancelled without Prejudice](#)

By Panky5

[Any recent AOS interview experience?](#)

By Joanne

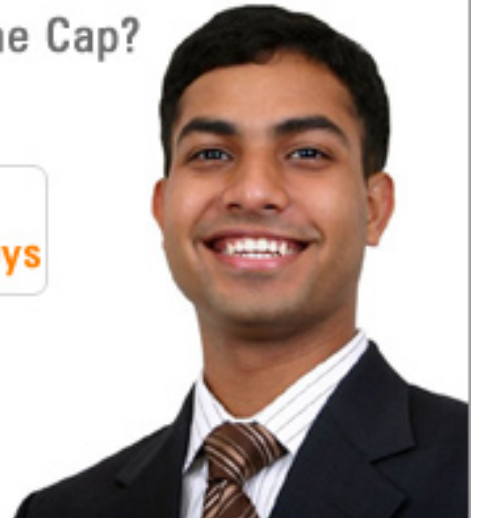
[More Discussions](#)

2009 H-1B Cap Strategies

How to beat the Cap?

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QUESTIONS AND ANSWERS

1. I currently live and work in the USA on [L1](#) processed by my employer; I was transferred from Australia to the US. My home country by birth is India, but I hold an Australian citizenship and passport now. I would like to know - if I find a position with another employer who is US based, can that employer process the [E3](#) visa that is meant for Australian citizens? I have a Post Graduate Diploma in Management (1 yr), a Bachelor's Degree in Science (3 yrs) and close to 20 years relevant work experience in the area of my work which is project and engagement management in the IT industry. What will be the impact on my [EB-1](#) green card process which is under process? Of course I realize that if I leave my current employer I can lose that priority but what is the prognosis for a green card under the E3 visa? Does the E3 visa come under a quota system like the H1?

As an Australian citizen you would qualify for the E-3 visa. The visa is available for "specialty occupations,"

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](#)

which include most positions that have a minimum education requirement of a bachelor's degree. With your education and experience you should easily qualify for the visa. The E-3 is limited to 10,500 individuals each year. The 10,500 limit does not include spouses and children. There are currently plenty of the E-3 visas available, and the cap is not fully utilized every year. If you leave your current employer the EB-1 petition for you as a multinational manager will no longer be valid. Any new employer will have to start the process for you from the beginning. This will most likely include going through the [Labor Certification](#) process. If the position that the labor certification is based on only requires a bachelor's degree there is a backlog of several years. If the position requires a master's degree (which it appears that you would have the equivalent of) it would fall into the [EB-2](#) (Employment-based 2nd preference) category, which is current - i.e., no waiting to file for permanent residence. The chances for success will be dependant on the type of job you take. If your [I-140](#) through your current employer gets approved before you leave your current company, and your [Adjustment of Status](#) application has been pending for longer than 6 months, you can keep the underlying I-140 valid as long as you move a job that is in the "same or similar job classification."

- 2. I am currently working in the US, in the state of California, on a [H1-B](#) Visa which has just been granted a 7th year extension, as I also have a Green Card application in progress through my employer. I am traveling to the UK next month and understand that in order to return to the States I need to ensure that I have the H1-B Extension Visa placed in my passport. As such, I have made an appointment with the US Consulate and understand that there are certain forms that I need to ensure I take with me. I want to know what would be my position if the consulate refuses the visa for any reason; and if this is the case will I be able to appeal the decision? And/or return to the US to work?**

You are correct. You must have a new visa stamp in your passport to be able to return to the US. The documentation that you need to take to the US consulate for the 7th year extension is the same as for any new H-1B extension, except that you also need to take the proof that you have had a labor certification pending for longer than one year. This should have been included in the last H-1B petition filed on your behalf, so providing a copy of the complete petition, as we always recommend, should be sufficient. Should the consular officer deny the visa (which is not likely) you have a couple of options. At this stage, the only reason the visa should be denied is if you have been convicted of a crime since your last visa application. The first step is to request a review by the Chief Consul. Depending on the reason for denial, the Chief Consul can overturn the officer that made the decision or 'suggest' that the officer review the decision again. If the Chief Consul will not review the decision, you can request review by the Visa Advisory Office in Washington DC. The VAO can overturn the officer and direct them to issue the visa. Unfortunately, if the visa is refused, you cannot reenter the US to work until the situation has been cleared.

[More Q&A](#)

SUCCESS STORIES

"We are soo happy, you can't imagine!!

It is so difficult to find someone you can rely on, trust with your dreams... and Visapro offered us that, people who really wanted to make it all work, who were willing to do their best in order to help us. And specially very patient people who answered all of our questions! I trust Visapro 100% and recommend it to anyone looking for reliable help when trying to get a visa. in our case it was an [O-1](#) visa, and it was just perfect!

Thank you, from the bottom of my heart!"

Marcelo and Tatiana Garcia,
Brazil

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