

FROM THE EDITOR'S DESK

It's been another month, and we are back again with many interesting happenings, current information and hot updates from the world of immigration.

As the US economy is sinking from a recession into a possible depression, the first order of business for President Obama's Administration has been to stimulate the economy. The stories of banking crises, bailouts, rising unemployment, plummeting securities and housing prices, rising inflation, rising gas and food prices, recession, and depression, are not new. It may be slowly, but things appear to be falling into place. However, the impact of economic uncertainty, both on employers and employees, is intimidating, especially when it comes to foreign nationals working in the US in [H-1B](#) visa status.



Jan. 23, 2009: The President meets with Congressional Democratic leaders in the Oval Office to discuss the economic recovery plans.

Many employers have considered downsizing, reducing

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employee work hours (benching) or pay, in order to cut costs. While these strategies may be necessary from a business perspective, employers need to keep in mind the possible impact these moves will have on their foreign national employees.

Employers with [E-3](#) (Australian) and H-1B employees must ensure that any downward revision of wages for these employees does not fall below the amount listed on the [Labor Condition Application](#) (LCA) that was obtained on their behalf. Failure to comply with the wage obligations of an LCA could be considered noncompliance by the US Department of Labor and could lead to negative consequences for the company. Employers are also required to offer H-1B employees who have been involuntarily terminated the cost of return transportation to their last place of foreign residence. This requirement does not extend to E-3 or [TN workers](#), nor does it apply to dependents of H-1B employees. Moreover, health care providers must ensure that offers of permanent employment to immigrant nurses also remain at a level equal to the prevailing wage of the Immigrant Visa petition (IV) that was filed on their behalf.

Foreign national employees generally feel a greater sense of insecurity during periods of economic uncertainty -- they may believe that their immigration status makes them more vulnerable to selection for any company downsizing. However, in addition to the LCA and return transportation protections for H-1B employees, there are a number of other protections for foreign national employees. Chief among them are provisions allowing H-1B employees to change employers upon the filing of a new H-1B petition, provided the employee is maintaining their current H-1B status.

If terminated, H-1B employees generally have ten days to depart the United States. H-1B change of employer provisions are helpful in allowing an H-1B employee to change employers in the wake of corporate downsizing, provided that the H-1B employee is still on the books of the initial company at the time of filing of the H-1B petition by the new employer. The H-1B employee can commence employment with the new company upon proper filing of the new H-1B petition. Please consult your immigration attorney prior to terminating an H-1B employee or hiring a new H-1B employee pursuant to the H-1B change of employer provisions.

An even more important protection for foreign national employees rests in the [Adjustment of Status](#) (AOS) portability provisions of the American Competitiveness in the 21st Century Act (AC-21). A foreign national with an AOS application that has been pending for 180 days or more, based on an approved or pending (with the proviso

YOUR OPINION

Do you think it is beneficial to introduce a stricter H-1B visa reform to make it mandatory for outsourcing companies to hire local American workers before seeking any H-1B visas for the foreign employees?

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

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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 March 2009.

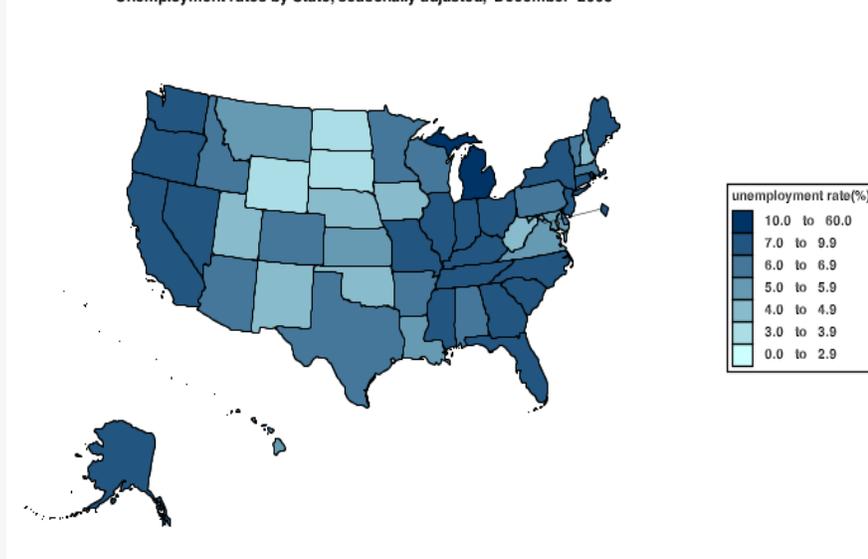
Abraham holds a Masters Degree in Mass Communication and has 2 years of work experience in the same field. He is a permanent resident of Singapore. He received an employment offer from an employer in US and wants to apply for an H-1B1 visa. He wants to apply for H-1B1 visa because the H-1B cap for the respective year has already been reached. Does Mr. Abraham qualify for an H-1B1 visa?

that the petition was 'approvable when filed') IV petition on Form [I-140](#), and that has not been withdrawn by the petitioning company or otherwise revoked by USCIS, may seek employment with a different employer in an occupation that is the 'same or similar' to the occupation that is listed on the I-140 petition filed.

The foreign national employee should notify USCIS of any change of employer, and should provide USCIS a description of how the new job opportunity is the 'same or similar' to the job opportunity described in the I-140 petition. In the absence of governing regulations, there is a lot of grey area and a wide divergence of practice for how employers and employees handle AOS portability situations. However, USCIS expects to publish regulations governing AC-21 that purport to address these issues in the near future. Please consult your immigration attorney when encountering employees with possible AC-21 issues.

Let's turn our attention to the ***American Recovery and Reinvestment Act of 2009*** *A bill to create jobs, restore economic growth, and strengthen America's middle class through measures that modernize the nation's infrastructure, enhance America's energy independence, expand educational opportunities, preserve and improve affordable health care, provide tax relief, and protect those in greatest need, and for other purposes.* This is the "economic stimulus package" that has been in the news for the last few weeks. While the bill that was passed and signed by President Obama on February 17, 2009, is primarily a "spending" and "tax cut" bill, it contains a number of provisions that will apply to foreign nationals.

Unemployment rates by State, seasonally adjusted, December 2008



By way of history, H.R. 1, the "American Recovery and Reinvestment Act of 2009," passed the House of Representatives on February 13, 2009, by a vote of 246 - 184. Later that day, the Senate also passed the bill by a vote of 60 - 38. The President signed the bill on February

[Submit Your Answer](#)

Immigration
Question?

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Winner of the Immigration Quiz - January 2009:

Melany Tellez

The Question:

I'm Huma Abraham, a non-US resident but I was in the US for quite some time. My son was born in US and thus he's a US Citizen of 10 years age. Can he sponsor me for Green Card?

The Winning Response:

Even though your son is a born US citizen, he can only sponsor you when he attains the age of twenty years because that is the statutory age imposed by US law. Right now your son is a minor. He cannot sponsor you for Green Card because he cannot be a financial sponsor for you at this point of time. Thus, as he reaches his 21st birthday, he shall be able to file an immigrant petition for alien relative (form [I-130](#)) on your behalf.

17, 2009. The bill is roughly a \$780 billion package, with about 35% of the package devoted to tax cuts (mostly for 2009) and the rest to spending intended to occur in 2009 and 2010.

The American Recovery and Reinvestment Bill of 2009 has been touted as the first crucial step in a concerted effort to create and save 3 to 4 million jobs, jumpstart the US economy. The final House-Senate conference agreement of the American Recovery and Reinvestment Act will:

- Create and save 3.5 million jobs, rebuilding America, making us more globally competitive and energy independent, and transforming our economy.
- Give 95 percent of American workers an immediate tax cut.
- Invest in roads, bridges, mass transit, energy efficient buildings, flood control, clean water projects, and other infrastructure projects.
- Restore science and innovation as the keys to new American-made technology, preventing and treating disease, and tackling urgent national challenges like climate change and dependence on foreign oil.
- Invest quickly into the economy.

The package contains targeted efforts in:

- Clean, Efficient, American Energy
- Transforming our Economy with Science and Technology
- Modernizing Roads, Bridges, Transit and Waterways
- Education for the 21st Century
- Tax Cuts to Make Work Pay and Create Jobs
- Lowering Healthcare Costs
- Helping Workers Hurt by the Economy
- Saving Public Sector Jobs and Protect Vital Services

The economy is in such trouble that, even with passage of this package, unemployment rates are expected to rise to between eight and nine percent this year. Tough choices have been made in this legislation and fiscal discipline will demand more tough choices in years to come.

The bill's immigration-related provision would place limits

Melany Tellez receives a **FREE Online Consultation** from an Experienced VisaPro Immigration Attorney during the month of February 2008.

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on any company receiving funds under the \$700 billion Troubled Asset Relief Program (TARP) from hiring skilled foreign workers under the H-1B visa program. That provision is primarily intended to prevent financial institutions from replacing laid off workers with foreign nationals. Companies would still be able to hire workers through the H-1B program, but they must actively recruit US workers and cannot allow foreign nationals to displace Americans in the workforce. One provision that we were happy to see dropped from the final version of the bill would have required employers and businesses taking bailout (TARP) money to use the federal government's E-Verify system to vet the employment status of their new workers. Conferees also removed the provision that would have renewed the currently voluntary E-Verify program for an additional five years. E-Verify is currently set to expire in March 2009. While the concept behind the E-Verify program is good, there are several bugs in the system that still needs to be worked out.

We will provide additional information as we have time to digest this more than 1000 page bill.

Other Developments in Immigration Law:

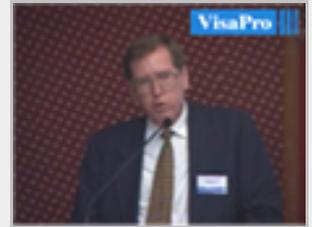
Non-Minister Category of Special Immigrant Religious Workers to Expire On March 06, 2009

On February 04, 2009, USCIS issued a reminder that the provisions for non-minister special immigrant religious workers will expire on March 06, 2009. Individuals applying under the non-minister category of the program, including family members, must either adjust status to permanent resident or be admitted with an immigrant visa before March 6, 2009. The expiring category covers special immigrant religious workers in professional or non-professional capacities within a religious vocation or occupation, but does not include those workers entering the United States solely to carry on the vocation of a minister of a religious denomination. Without a Congressional extension of the expiration date, USCIS will, beginning on March 6, 2009, reject any Form I-360, and will discontinue any further processing of pending Form I-360, Form I-485, and Form I-824 affected by the expiration date until further notice.

Senate Approves Strict Rules on Hiring H1-B Workers

The U.S. Senate agreed to set restrictions on the hiring of H-1B workers by financial services firms that receive federal bailout funds, but it didn't bar the hiring of foreign workers as proponents had sought. The amendment, part of the stimulus plan being debated in the Senate, didn't include a blanket restriction on H-1B use and instead set a series of strict standards on H-1B hiring. Any firm receiving TARP funds will be automatically considered H-1B

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dependent, regardless of the percentage of H-1B workers on the payroll.

DOL Updates on the PERM Labor Certification Process

The Department of Labor (DOL) has steadily increased enforcement measures which have in turn led to an increase in the amount of audits and processing times for PERM [Labor Certification](#) applications. In a recent liaison meeting, the DOL revealed that in light of the country's current economic crisis, there will be continued efforts to closely monitor the PERM applications submitted. The DOL took particular note of the 180,000 jobs lost in the last month and the 1.2 million jobs lost in the last five months. In response to continued layoffs, the DOL plans to increase supervised recruitment.

State Department Issues March 2009 Visa Bulletin

The Department of State has released the Visa Bulletin for March 2009. As per the State Department's March 2009 Visa Bulletin, there is going to be a six-week advancement in priority date cut-offs for the employment-based second preference category ([EB-2](#)) for India and China next month. For the third employment-based preference ([EB-3](#)) subcategory for professional and skilled workers, priority dates will advance three weeks for China but will move forward four-and-a-half months for Mexico; cut-off dates will remain unchanged for all other countries. For the EB-3 "other worker" subcategory, priority dates will remain unchanged for most countries, but will advance three weeks for China and 17 months for Mexico.

New I-9 Regulation Postponed

USCIS announced on January 30, 2009 that it was delaying for 60 days, until April 3, 2009, the implementation of the interim final rule streamlining the documents that will now be acceptable for Employment Eligibility Verification ([Form I-9](#)). The interim rule was published in the Federal Register on Dec. 17, 2008. In addition, USCIS has reopened the public comment period for 30 days, until March 4, 2009. By way of background, all employers must complete a Form I-9 for all newly hired employees to verify their identity and authorization to work in the United States.

Naturalization for the US Military Personnel

The USCIS continues its push to educate the public about its special rules for the naturalization of US military personnel. On February 03, 2009 they issued another notice outlining the rules as they now apply to the military. If you are in the US military and want to become a naturalized US citizen contact our offices to see if you qualify.

DOJ Announces Multi-State Arrest for Targeting Visa and Mail Fraud

And finally, on Wednesday, February 11, 2009, Federal agents arrested 11 individuals in 6 states as part of an investigation into suspected visa and mail fraud. Matthew G. Whitaker, United States Attorney for the Southern District of Iowa, announced the operation, which was carried out by federal, state and local law enforcement agencies in Iowa, California, Massachusetts, Texas, Pennsylvania, Kentucky, and New Jersey. VISION SYSTEMS GROUP, INC., a New Jersey Domestic Profit Corporation, with a branch office in Coon Rapids, Iowa, was also indicted in a ten count federal indictment that included one count of conspiracy, eight counts of mail fraud, and one count of 'Notice of Forfeiture' in the amount of \$7,400,000. "This case highlights the Department of Homeland Security's commitment to identifying and dismantling visa fraud schemes," said Homeland Security Acting Assistant Secretary for ICE John P. Torres. "Ensuring the integrity of our nation's legal immigration system is a top priority for ICE." As this case shows us USCIS, the Dept of Labor, and ICE continue to be vigilant in enforcing our immigration laws.

Immigration Articles and Other Fun Stuff:

Now for the regulars – this month's **Immigration Article entitled 'Work Visa and Work Permit – Are They the Same Thing'** gives you a detailed insight about the work visas and the work permits. People often get confused between work visa and work permit. Thus, this article has been designed to help you understand the difference between the two and analyze which one you qualify for...! Also check out our **In Focus** section for this month, which is completely a new learning on '*how can one adjust his or her K status if the marriage ends in divorce.*' We have covered **CHOIN V. MUKASEY**, an argument as decided by the 9th Circuit Court of Appeals on August 12, 2008, which bestows the right to K visa holder to adjust his or her status to permanent residency if unfortunately the marriage ends in divorce.

Every month we introduce a new and interesting question for our opinion poll. Last month's poll results indicate that 64.71% of the respondents believe that all visitors from VWP countries are required to have an approved travel authorization via ESTA to board a plane or vessel bound for the United States? 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 **Melany Tellez** 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

Melany Tellez 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!!!

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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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[CBP Publishes Revised Information Collection on Form I-94 and I-94W](#)

The U.S. Customs and Border Protection (CBP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act concerning the Form I-94 (Arrival/Departure Record), the Form I-94W (Nonimmigrant Visa Waiver Arrival/Departure), and the Electronic System for Travel Authorization (ESTA).

[E-Verify Tool to Counter Hiring of Illegal Immigrants in the US](#)

The requirement that federal contractors utilize E-Verify has been delayed once again. The argument for this delay is to allow the Obama administration time to review this requirement. The purpose of E-Verify is to crackdown on federal contractors who hire illegal immigrants. The

Bush Administration had initially stated that this requirement would come into effect on January 15, 2009; however, due to a lawsuit filed by the US Chamber of Commerce regarding this very requirement, the implementation of the requirement was delayed until February 20, 2009.

[USCIS Fact Sheet on Iraqi Refugee Processing](#)

The USCIS, on February 11, 2009, released a Fact Sheet on Iraqi Refugee Processing, which provides a detailed overview of Iraqi refugee processing for both Iraqi citizens who are currently in US and outside US. The Fact Sheet includes contact information for the IOM in Jordan and Egypt, information on special immigrant visas, and data on Iraqi applicants to the U.S. Refugee Admissions Program.

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IN FOCUS

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Can One Adjust His or Her K Visa Status if the Marriage Ends in Divorce?

An important immigration decision was just issued by the Ninth Circuit Court of Appeals, which held that aliens who entered the United States on K visa status, but who subsequently obtain a divorce prior to obtaining permanent resident status are entitled to adjust their K visa status to permanent residency. Thus, if you enter into a bona fide marriage, but unfortunately the US citizen spouse dies, or the marriage ends in divorce before the USCIS makes a decision on the application for adjustment of status, don't panic. The 9th Circuit's holdings in Freeman vs. Gonzalez and Choin vs. Mukasey may save you from deportation and allow you to adjust your K visa status to permanent resident.

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IMMIGRATION ARTICLE

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Work Visa and Work Permit – Are They the Same Thing?

Many people often equate work visa with work permit (Employment Authorization Document), but in reality they differ. A work visa like H-1B or H-2B can be defined as an endorsement by authorities that allow a foreign national to enter the US for the purpose of work. It denotes that an applicant has applied, been examined, and approved for the visa being sought. On the other hand, work permit or Employment Authorization Document (EAD) is given to people who are legally authorized to accept employment. This article is designed to help you understand the difference between work visa and work permit, so that, you can analyze which one you need based on your situation.

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DISCUSSION CORNER

[I-130 Bringing wife to the US, clarification?](#)

By Cimhal

[Question for Ronnie about marriage to visitor](#)

By Edoardo

[J1 married to an American how to fill taxes?](#)

By Nicery

[Stamped "Cancelled without Prejudice"](#)

By Annien

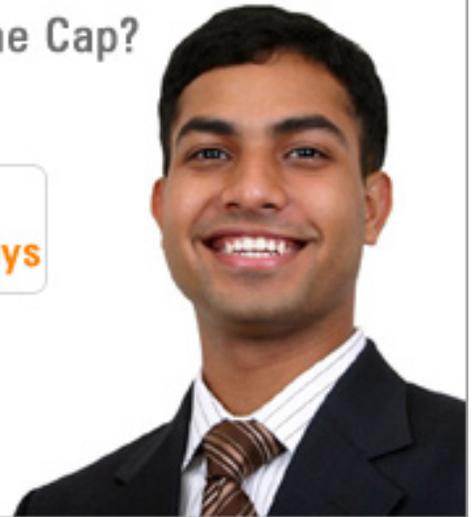
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QUESTIONS AND ANSWERS

1. **I'd be soon getting married to a U.S. citizen this year. Can I come to the U.S. on the Visa Waiver Program and get married? Will I be punished for doing this? Also I currently work overseas for a U.S. company. Can I still work overseas while my [I-130](#) and [I-485](#) are pending? I work 2 months over here then have 1 month off. Can I still come to the states on the VWP on that month off?**

If you enter the US on the visa waiver program you can still get married and file for adjustment of status in the US. However, if you marry and file for adjustment of status within 30 days of entry there is a presumption that you had this as a preconceived intent and the USCIS, while they rarely do, could deny your adjustment of status application. To avoid the presumption we recommend that you wait for 30 to 60 days after entering before you marry and file for adjustment of status.

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](#)

The drawback to this plan is that once you file for adjustment of status you have to remain in the US until you are granted permanent residence or receive advance parole from the USCIS. Unfortunately the USCIS is currently taking 60-90 days to process advance parole applications (which would not fit with your current 60/30 day schedule). If you can remain in the US for long enough to get the advance parole you would be able to maintain your job overseas.

Once you are married your ability to travel to the US as a visitor may be affected. As the spouse of a US citizen you are considered to be an "intending immigrant" and a US immigration officer at a port of entry could stop you from coming in. If you are chosen for questioning you would have to convince the officer that you are only visiting, based on your job outside the US and that you are processing your immigrant visa in your home country (if you do not file for adjustment of status in the US when you marry you should begin the immigrant visa process). If you are able to convince the immigration officer of your nonimmigrant intent you would be able to continue your periodic visits to the US. If not, you would not be able to return to the US until you have completed your immigrant visa processing outside the US.

- 2. I am currently working with a company under TN Canadian work permit which will expire in next 6 months. I want to move to another company. The question is: can I work for the other company with my current work permit? In my passport the name of my current employer is stated. I would like to know what is the procedure, if the new company needs to sponsor my [TN visa](#) or if I can just move to the new company with the current TN visa and renew it when it expires. Also, I would like to know my options of immigration as the new company would probably like to sponsor me for the [H1 Work visa](#), can we do it now at the time of hiring or we have to wait for the April date?**

The TN visa is employer specific so you cannot just change employers and use your current "work permit." You must have a new TN with the new employer. You can either process the new TN at the border or you can file for a [change of status](#) with a USCIS service center. If you process at the border you will get the approval at the time of filing. If you file a petition for a change of employer with the service center it will take 15-75 days for a response. Since you do not currently have an [H-1B](#) visa you will have to wait until you can file for the fiscal year 2010. This filing period will start on April 1, 2009.

[More Q&A](#)

SUCCESS STORIES

"I would like to express our thanks to the Visapro team for guiding us through this complicated process and making it seem remarkably easy. [VisaPro legal team] was incredibly knowledgeable and extremely helpful throughout the process. We were exceptionally impressed with how they have combined the great personal and communication skills they bring and also technology with a highly intuitive website which guides you and keeps you updated throughout the process. Visapro were successful in getting approval for an [H1b Visa](#) for us and our beneficiary in a particularly difficult year with thousands more applications than visas being issued. We have used previous immigration lawyers in the past and the difference was dramatic with Visapro, they have an exceptional knowledge of the USCIS system and made for a smooth and successful process.

This is a true testimonial; I would highly recommend Visapro to anyone looking for guidance and success in this area."

Thank you and Regards

Paul Lyons, President and CEO
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