

## FROM THE EDITOR'S DESK

*Hello and welcome to the May 2012 Immigration Newsletter!*

We are barely two months into the Fiscal Year 2013 [H-1B](#) filing season and well over half of the H-1B cap numbers have already been used. USCIS has reported that as of May 18, 2012, it has received approximately 42,000 (out of 65,000) H-1B cap-subject petitions and 16,000 (out of 20,000) cap-subject petitions for foreign nationals with advanced degrees – meaning, only about 23,000 and 4,000 numbers are left for the H-1B regular cap and master's cap, respectively. Last year, the H-1B regular cap numbers did not reach 41,000 until October 7, 2011 – almost 6 months from the start of the FY 2012 filing season!

**Based on current calculations and the prediction that there will be a surge in H-1B filings as the cap is about to be reached, we will very likely be reporting that the cap has closed in our next newsletter in June! With this in mind, employers intending to employ foreign workers are well advised to contact us IMMEDIATELY. Make sure to [contact VisaPro](#) to discuss all options as soon as a position is offered.**

In other news, in a welcome development, the Department of Homeland Security (DHS) has announced an expansion of the list of STEM (science, technology, engineering, and math) designated-degree programs that qualify eligible graduates on student visas for an optional practical training (OPT) extension [OPT STEM extension]. The expanded list of designated STEM degree programs includes fields such as Pharmaceutical Sciences; Health/Medical Physics; Architectural and Building Sciences/Technology; Educational Evaluation and Research; Air Science/Airpower Studies; Archeology; and many other fields. This welcome decision of DHS is expected to benefit international

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students and U.S. employers alike.

In the Employment Based Green Card front, as announced earlier, the DOS June Visa Bulletin indicated that the [EB-2](#) priority dates for India and China are currently unavailable and it will remain so for the remainder of FY-2012. EB-2 visa numbers for nationals of China and India will not be available again until October 1, 2012, under the FY-2013 annual numerical limitations. In what could be even more bad news for EB-2 beneficiaries from India and China, DOS has communicated that while it is impossible to accurately estimate how long it may take to return to the May 1, 2010 cut-off date which had been reported in April 2012, current indications are that it will not occur before spring 2013. Meanwhile, the EB-2 numbers for other countries remained current, along with [EB-1](#), [EB-4](#), and [EB-5](#) numbers for all countries.

Following the preliminary injunction ordered by the U.S. District Court for Northern District of Florida against the implementation of the H-2B Final Rule 2012, the Department of Labor (DOL) announced that for the time-being, employers should file their H-2B labor certification applications under the 2008 regulations. Further, DOL has also informed stakeholders that in light of the preliminary injunction, employers filing [H-2B](#) applications under the 2008 Final Rule must do so using the extended ETA Form 9142 and Appendix B.1, reflecting the October 31, 2012 expiration date (ETA Form 9142, Appendices A.2 and B.1 and associated instructions which were previously set to expire on April 30, 2012, have been extended and the new expiration date for these forms is October 31, 2012). We will continue to keep our readers informed on further developments related to the H-2B Final Rule 2012.

Applicants for the Diversity Visa (Visa Lottery) under DV 2013 program should now be able to check the status of their entries through the Entrant Status Check on the E-DV website. The Department of State (DOS) has advised the public, however, of a notable increase and reporting of fraudulent emails and letters sent to DV program applicants. The DOS **DOES NOT SEND EMAILS TO ENTRANTS REGARDING THEIR STATUS OF THE DV LOTTERY.** DOS has advised applicants that the Entrant Status Check is the only means by which DV selectees will be notified of their selection, and it will provide successful selectees instructions on how to proceed with their application. Entrants will need to use the information from their confirmation pages saved at the time of entry. Further, as more DV 2013 entrants may be selected on October 1, 2012, applicants have been advised to keep their confirmation. For more information, DV applicants should [click here](#).

## YOUR OPINION

**Do you think the expansion of list of designated STEM degree programs will effectively help bring the best and most qualified international students to the US?**

- a. Yes
- b. No
- c. Not Sure

[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 June 2012.

*Hi. I am a Citizen of Spain and I am currently in the US on an E-1 visa. I am considering a change of employment. Can I seek a change of status from [E-1](#) to [H-1B](#) while remaining in the US?*

[Submit Your Answer](#)

## Other Developments in Immigration Law:

### [AAO issues Binding Precedent Decision on P-3 Visa Petition](#)

The USCIS Administrative Appeals Office has issued a rare binding precedent decision addressing the term “culturally unique” and its significance in the adjudication of petitions for performing artists and entertainers under the [P-3](#) visa classification. AAO has clarified that a “culturally unique” style of art or entertainment is not limited to traditional art forms, but may include artistic expression that is deemed to be a hybrid or fusion of more than one culture or region.

### [DOL announcement on new H2B Regulations 2012](#)

DOL announced that on April 26, 2012, the new H2B Regulations 2012 were preliminarily enjoined by the U.S. District Court for Northern District of Florida, Pensacola Division, and have not been implemented. Therefore, for the present time, employers should continue to file their [H-2B](#) labor certification applications under the previous 2008 regulations.

## Immigration Articles and Other Fun Stuff

Our ‘**Featured Video**’ for this month titled ‘[H1B Employee: Dealing with Multiple Job Locations](#)’, explores situations where an employer sends an H1B worker to a new worksite not listed on the Labor Condition Application (LCA) and explains how to determine when a new LCA is required and if an amended H1B petition may be required. Please check out and subscribe to our YouTube channel to take advantage of another great service provided to you by VisaPro.

Also check out our **In Focus** article for this month titled ‘[The ‘Intern Visas’: Options for Employing Foreign Students and Recent Graduates](#)’, which provides a snapshot of the various intern visa options that may be available to US employers and companies, who are considering employing foreign national interns.

Every month we introduce a new and interesting question for our opinion poll. Last month’s poll results indicate that a majority of respondents (**57.14%**) think that DOL’s new H-2B Regulations 2012 are more business-friendly than the previous [H-2B](#) regulation. We must admit that we are a bit surprised with the response received for this poll question. However, we do appreciate that people take interest in the

Immigration  
Question?

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### **Winner of the Immigration Quiz - April 2012:**

Ahmed Shah

#### **The Question:**

I am currently in the US on a [B-1](#) visa. I wish to enroll in a course of study. Can I do that while I am on B-1?

#### **The Winning Response:**

If you are in the US on a B-1, you cannot enroll in any course of study. It is prohibited and if you enroll in any course, you will be violating the conditions of your stay.

**Ahmed Shah** receives a **FREE Online Consultation** from an Experienced VisaPro Immigration Attorney during the month of May 2012.

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 **Ahmed Shah** for winning last month's Immigration Quiz. **Ahmed** gave the best answer and won a free online consultation to discuss the concerned Immigration issues. 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](mailto: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*

## **JOB**s @ VisaPro

- Full-Time
- Part-Time
- Semi-Retired

**Job Type:** W-2 or 1099

**Location:** Work from anywhere in the U.S. No need to relocate.

▶ [Immigration Attorney](#)

▶ [Immigration Paralegal](#)

## **NEW TO VisaPro?**

Do you have questions regarding the [H-1](#), [L-1](#), [E-1](#), other work visas or Green Cards? VisaPro has answers to commonly asked immigration questions. [Click here](#) to find out more.

## RECENT IMMIGRATION EVENTS



VisaPro Attorney  
Mr. Thomas Joy at  
NOVA SHRM Seminar



VisaPro Team at  
NOVA SHRM Seminar



NOVA SHRM  
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## FEATURED VIDEO

### H1B Employee: Dealing with Multiple Job Locations?



When an employer sends an H1B worker to a new worksite, not listed on the Labor Condition Application (LCA), the employer must act to maintain compliance with the regulations. Here, we put together an analysis to determine when a new LCA is required, and if an amended H1B petition may be required.

[More Videos...](#)

## LATEST NEWS

### [H2B Cap Count Update](#)

USCIS has updated the count of H2B visa petitions received and counted towards the H2B cap for the 2nd half of fiscal year 2012 employment. As of May 18, 2012, USCIS has received filings on behalf of approximately 25,722 beneficiaries, and approved approximately, 23,548 H2B beneficiaries for the 2nd half of FY 2012.

### [DHS announces re-designation of Somalia for TPS](#)

DHS has announced the re-designation of Somalia for TPS and has extended the existing TPS designation for Somalia from September 18, 2012 through March 17, 2014. Somali nationals with TPS who are seeking to re-register for TPS must file their application packages during the 60-day re-registration period that runs from May 1, 2012, through July 2, 2012. Somalis, or

persons without nationality who last habitually resided in Somalia, who are currently in the United States and do not currently have TPS may apply under the re-designation during the six-month period that runs from May 1, 2012 through October 29, 2012.

IN FOCUS

XML

## The 'Intern Visas': Options for Employing Foreign Students and Recent Graduates

U.S. companies and employers often get concerned about employing foreign national students and graduates as interns, being unsure of what the related obligations could be. However, contrary to their fears, employing foreign national students and graduates to work as interns in their U.S. organizations, is not as difficult as many employers would think. For the benefit of U.S. companies and employers, desirous of employing foreign national students and graduates as interns, as well as foreign national students desirous of being employed as interns, we present in this article, a snapshot of couple of intern visa options that may be available to them to choose from in such situations.

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## QUESTIONS AND ANSWERS

**Q1. I have a petition under EB3 with a priority date of 2010. Can I still apply for a U.S. working visa through a different agency?**

**Ans.** We presume that you are currently outside the U.S. and a sponsoring U.S. employer initiated a Green Card case for you in the EB-3 category. It is not clear, however, whether your case is under the professional and skilled workers category of [EB-3](#) or the unskilled workers category of EB-3.

Nonimmigrant work visas can be classified into two types – those that support ‘Dual Intent’ and those that do not support ‘Dual Intent’. Dual intent allows you to pursue permanent residence in the U.S. at the same time that while you are seeking a nonimmigrant visa. ‘Dual Intent’ is recognized for nonimmigrant work visas like [H-1B](#), [L-1](#) and [O-1](#), meaning that you would not be denied a visa under those categories merely because you have a Green Card petition pending. You must, however, satisfy the requirements prescribed for those categories to qualify for a visa under that category. If you qualify for a work visa category that is recognizes dual intent, and if you have a suitable job offer from a US employer and if other requirements prescribed for the work visa category are met, you can consider applying for that suitable nonimmigrant work visa category.

Dual intent is not, unfortunately, recognized for all nonimmigrant work visas. Certain visa categories like H-2B do not support dual intent. Hence, it is important to understand what work visa categories you may be eligible to seek employment under. You should consult an immigration attorney to review your situation and see if you qualify for any nonimmigrant work visa that supports dual intent.

**Q2. My wife and children are all US Citizens. I had a Green Card but surrendered it ten years ago, when we shifted our residence out of the US. We now wish to come back to, and live in the US. Is there any way I can revive my earlier Green Card?**

**Ans.** As you have abandoned your earlier Green Card, it is essentially gone and there is no way for you to regain that Green Card. You cannot “revive” that Green Card. If you want to move to the U.S. permanently now, you are going to have to re-immigrate to the U.S., or in other words, you need to get a new Green Card in order to be able to stay permanently in the U.S. You should consider applying for a new Green Card as the spouse of a U.S. Citizen. Or, alternatively, if any U.S. employer is willing to sponsor you for an Employment Based Green Card, you could explore that option, too. You should consult an immigration attorney to review your situation and explore the most suitable, quickest and cost-efficient options for you to get a Green Card again.

## 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](#)

## SUCCESS STORIES

*"I would like to thank you for your patience with us in this 'journey' of sorts. Your patience and professionalism along the way helped us get comfortable with processing papers without meeting the people we entrust our future to.*

*I sincerely hope that we are able to work together on more projects. I would hope that our E2 application for [Beneficiary] is successful ... regardless, i know that you put forth your best efforts into the process and that counts a lot !!!"*

Thank You !

**Annie Barrientos,**  
Secretary  
BARZ Corporation

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