



## Business Immigration Reporter

Vol. 1 - Issue 11

November 2015

### Three Senators Oppose EB-5 Program Extension

The EB-5 employment creation program allows entrepreneurs to apply for permanent residence if they make the necessary investment into a commercial enterprise in the United States; and plan to create or preserve 10 fulltime jobs for qualified U.S. workers.

Congress created the program in 1990 to stimulate the economy and added a pilot program called the Regional Center program in 1992. The Regional Center program requires reauthorization from time to time, a bill which is typically tagged onto the yearly budget appropriation bill.

This year the EB-5 program has been extended temporarily until December 11, 2015 and it is expected to be extended further, except for the opposition by Senators Grassley, Corker, and Johnson. The three Senators are not categorically opposing the extension, but they call for stricter rules concerning potential fraud and securities laws violations. The Senators want to vest the USCIS with the tools necessary to investigate or terminate regional centers and projects, and conduct background checks for those affiliated with the program.

### I-Visa: Representatives of Foreign Media Update

I-Visa holders are representatives of foreign media who represent a foreign media outlet such as press radio and film. Sample occupations in this category are reporters, film crews and editors.

The purpose of the I-Visa category is to facilitate the exchange of information between nations. Recently, the USCIS has set out to further clarify and qualify who comes within the purview of the I-Visa category and has updated its policy manual accordingly.



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## The policy highlights

- Clarify the definition of foreign media representative, which may include employees of independent production companies.
- Clarify eligibility requirements for the media representative “I” visa classification.
- Reaffirms that media representative nonimmigrant classification is intended for those working in information-based or news gathering activities, and not entertainment.

Should you or your company require details of this update please check the USCIS Policy Manual Volume 2 or contact your immigration lawyer.

### **Department of State Implements New Rule Concerning “Interview Waiver Authority”**

Every person, 14 or older who requires a non-immigrant visa to enter the United States is required to report for a visa interview at a U.S. Embassy or Consulate for determination of visa issuance eligibility.

The Department of State (DOS) has promulgated a new rule to clarify the circumstances in which a consular officer may waive the requirement for a non-immigrant visa interview.

The new rule allows for a waiver of the interview upon a determination that a waiver is necessary as a result of unusual or emergent circumstances. Such circumstances include humanitarian crisis or medical emergencies. In addition, the DOS extended waiving personal interviews for TECRO (Taipei Economic and Cultural Representative Office) non-immigrants for their non-immigrant status is equivalent to diplomatic or official visa holders.

The new rule has been in effect since November 10, 2015.

### **Immigration Executive Action headed to the High Court**

After Congress’ inability to pass immigration reform of any kind, there was much excitement in the immigrant community when, as a result, President Obama announced immigration executive action in November 2014. Among many other improvements to our broken immigration system, the announcement called for deferred action and three-year work authorizations for nearly 4.3 million undocumented parents of U.S. citizen children.

Shortly after the executive action announcement, 26 states, led by Texas, filed suit, challenging the President’s authority and alleging undue financial burdens on the states. As a result, a district court in Texas ordered an

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injunction on the executive action programs days before its scheduled implementation in February 2015.

Following the injunction, the Administration appealed to the 5th Circuit Court of Appeals. In a 2-1 decision, the Court ruled against the President this week, upholding the lower court's ruling that the Administration had not provided required and adequate public notice prior to attempting to change federal enforcement policies.

The Administration and the Department of Justice disagree with the 5th Circuit's decision and are seeking review by the U.S. Supreme Court. The Administration remains hopeful the high court will accept the case and hear it in the Spring of 2016 for a ruling in June before the Justices leave for the summer.

Time is running out and the political grapevine has it that the lower courts deliberately delayed their decisions in an effort to narrow the window for the Administration to get the case before the Supreme Court.

The Administration must file its petition by the end of November. Notwithstanding potential opposition from Texas, including requests for extensions to oppose, the Supreme Court meets in private conference on January 8, 15 and 22 to make decisions what additional cases, if any, to hear.

If the Supreme Court accepts the case and rules in favor of the Administration, the program would be implemented in the Summer of 2016, with just a few months left in Obama's term. Although the President claimed that remaking immigration laws was among his top second-term priorities, his political fight to provide relief for millions of undocumented people in the United States has resulted in only modest gains.

While the opponents of executive action, such as Senator Grassley opine that "the President simply can't rewrite the country's immigration laws," proponents, such as Rep. Luis Gutierrez (D-IL) opines "the law and common sense are so clearly on the president's side that it is only a matter of time before these deferred action programs are fully implemented."

Whatever your opinion may be, the high court's word will be final.

### **E-Verify and I-9 Updates**

If your company has been using E-Verify for more than 10 years, you may want to beginning with the New Year, USCIS will delete all E-Verify transactions older than 10 years. This means your company will no longer have access to records created prior to December 31, 2005. Moving forward, USCIS will delete E-Verify records older than 10 years annually.

[Read the specific instructions](#)

USCIS' I-9 Central has received new features such as

- A new dynamic landing page
- Improvements to the acceptable documents web page
- Better access to the bilingual I-9's
- New learning resources; and
- A new Q & A section

You can find I-9 Central at <http://www.uscis.gov/i-9-central>

### **December 2015 Visa Bulletin**

There have been no significant movements in the employment-based categories. Most categories advanced by one month since issuance of the November bulletin, with exception to EB-3 from China which advanced by nearly four months.

[Read the new visa bulletin](#)

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