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IMMIGRATION LAW UPDATE

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Special points of interest:

- NY State to issue driver's licenses without proof of legal status.
- EAD and AP approvals begin to trickle out of the Service Centers for July 2007 adjustment filings.
- November Visa Bulletin keeps the status quo for EB cases.
- Loud restrictionist minority keeps Congress handcuffed.

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Congress Continues to Deny Immigration Legislation

Congress has shown again that they refuse to entertain any beneficial immigration related legislation and are living in fear of a loud minority of voters in their districts. On October 25, 2007 the DREAM Act ("Development, Relief and Education for Alien Minors Act of 2007") failed to pass a cloture vote resulting in disappointment to many children who find themselves in the United States without status and hope.

In response to this disappointing vote, the American Immigration Lawyers Association ("AILA") issued the following statement:

AILA WASHINGTON, DC - "In a stunning display of heartlessness and gutlessness, the Senate voted today to quash the dreams and aspirations of hundreds of thousands of American students. The 52-44 vote in favor of proceeding to debate on the DREAM Act (S. 2205)

fell eight votes short of the necessary 60 vote threshold. That eight-vote shortfall means a generation of American kids will remain stranded at the schoolhouse door. And while the vote is a nightmare for children, families, educators, and military recruiters throughout the country, it will also haunt the long-term political fortunes of those Senators standing on the wrong side of justice. Make no mistake about it, the vote on this bill was about much more than immigration policy, it was a vote about who we are as a country. These young people were brought to the United States by their parents at an age where they had no say in the decision. Many have spent the majority of their lives in the United States and consider themselves to be Americans. Like their U.S.-born peers, they dream of pursuing a higher education or serving their country, but they are prevented from



Thanks to the latest failure of Congress to act, close to one million children cannot attend college because of their immigration status.

doing so because they lack legal status. Obviously, our failed immigration (continued on page 3)

PERM Users Indicate Higher Number of Audits From DOL

Immigration Business News and Comment (IBNC) reported on October 15, 2007 that the US Department of Labor (DOL) has increased the number of random and targeted audits of PERM labor certification applications. IBNC reports that the both the Atlanta and Chicago National Processing Centers have increased audits with Chi-

cago increasing their number of random audits and Atlanta increasing their number of targeted audits. Atlanta is said to be targeting the issue of whether the requirements are normal for the position. This note is a reminder to employers to keep close track of their incoming mail and to forward any and all DOL corre-

spondence to their immigration counsel immediately. Employers who are clients of this office should call immediately upon receipt of the audit notice from DOL. We will make arrangements to obtain this notice from the employer to begin the response to the DOL audit in timely fashion.

Motion to Reopen May be Filed by Removed Alien

The Fourth Circuit held in *William v. Gonzales* (2007 WL 2494763, 4th Cir. Sept. 6, 2007) that contrary to current regulations, an alien who has been removed from the United States may file a motion to reopen. The court found that the regulation denying aliens the right to file a motion to reopen if they have been removed (8 CFR section 1003.2(d)) conflicted with another regulation which allows aliens to file one motion to reopen (b USCAs section 1229a(c)(7)(A)).

In *William* the petitioner was removed from the United States on July 11, 2005 for certain criminal convictions. The petitioner filed a motion to reopen with the Board of Immigration Appeals on December 21, 2005. The court found that 1229a(c)(7)(A) is "unambiguous" and that it provides the alien the right to one motion to reopen regardless of where the alien is currently located. The court therefore rule that 1003.2(d) which denies aliens the right to file a motion to reopen if they have

been removed to "lack authority and is invalid." The court then remanded the case to the Board of Immigration Appeals ("BIA") for further proceedings.

This case is good news to aliens who filed a motion to reopen while detained, but where removed prior to a decision being issued by the BIA or Immigration Court. However, the court was silent as to what effect this decision would have on removed aliens should their cases be reopened.



The Fourth Circuit found that a Motion to Reopen may be filed by an alien regardless of being in or outside of the United States.

July 2007 Visa Bulletin Update

US Citizenship & Immigration Services (USCIS) has been issuing receipt notices (Notice of Action) for the 320,000 I-485 Applications to Adjust Status, with accompanying I-140 Immigrant Visa Applications, I-765 Employment Authorization Documents and I-131 Advance Parole Applications that were submitted under the July Visa Bulletin process.

This office has received receipt notices for the applications

filed in July with periphery benefits of Employment Authorization Documents (EAD) and Advance Parole (AP) being issued for the early July (July 2nd) cases.

Since our update on this process last month, applicants have been receiving Employment Authorization Documents in the mail directly from USCIS. A few applicants have also received Advance Parole travel documents as well.

The latest round of notices involves biometric appointments for applicants. Applicants should be certain to attend the biometric/ fingerprinting appointments as scheduled by USCIS. Failure to attend these appointments could result in USCIS denying the adjustment application for abandonment. Applicants should also be certain to take the original I-485 receipt notice with them when traveling outside of the United States.

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November 2007: EB-1, EB-2 and EB-3 Numbers Available

The November 2007 Visa Bulletin looked much like last month when the Department of State moved the EB-1, EB-2 and EB-3 visa numbers forward from the previous "unavailable" status. However, the numbers did not advance for November.

The Department of State left the visa numbers the same in most categories, EB-1 and EB-2 remained "current." EB-3 remained at August 1, 2002. China, India and Mexico EB-1

remained at "current." China EB-2 remained at January 1, 2006 and China EB-3 remained at September 1, 2001. India EB-2 remained at April 1, 2004 and India EB-3 remained at April 22, 2001. Mexico EB-2 remained at "current" and Mexico EB-3 remained at April 22, 2001.

On the Family-Sponsored side the news continued to be less than spectacular with continued slow progression. The

entire world, as well as China and India had the same visa numbers with some progress: F-1 is December 8, 2001; F-2A is December 15, 2002; F-2B is September 15, 1998; and F-3 March 1, 2000. F-4 varied with 1996 & 1997 dates. Mexico and the Philippines lagged well behind the above dates. As always the visa bulletin can be located online: www.state.gov.

Department
Of
State



November showed no progress for employment-based visa numbers and very little forward progress for family-based applicants as well.

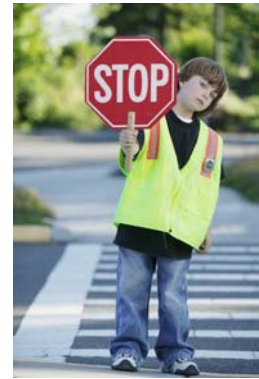
DREAM Act Fails to Pass Cloture Vote

policies put these kids in an untenable predicament and this bill sought to provide an avenue for them to secure legal immigration status. That, however, was simply a means to the bill's end of providing these faultless kids with an opportunity to fulfill their dreams, maximize their potential, and contribute to this nation. Today's vote to deny them that opportunity is a sad commentary on the state of American politics.

Our purported policy makers

have shown a keen knack for sidestepping critical public policy issues and immigration policy is Exhibit A. So we commend and thank Senators Reid (D-NV), Durbin (D-IL), Lugar (R-IN), and Hagel (R-NE) for their courage and commitment in forcing the Senate to face its responsibilities and take an up or down vote on this important issue. Sadly, too many of their colleagues succumbed to the political fears generated by a vocal cabal of xenophobic extremists.

There will be a number of additional opportunities over the next few months to pursue narrow, targeted immigration policy reforms. AILA, along with the rest of the country, will be watching closely to see if the immigration restrictionists in Congress continue their slow march to political suicide or do what they were elected to do: make smart policy choices that will advance America's interests and solve America's problems."



In denying the DREAM Act time to be debated on the floor, Congress prevented almost one million children the chance to attend college.

Notes of Interest

Here are some noteworthy items that came in over the past 30 days...

- The H-2B cap for the first half of FY 2008 has been reached as of September 27, 2007. The cap is set at 33,000 visas and is for start dates prior to April 1, 2008.
- On October 1, 2007 the US Department of Labor (DOL) announced that the

permanent foreign labor certification program backlog has been eliminated with 99% of the cases completed. The process took three years and DOL reviewed 363,000 pending cases during that time.

- The US Embassy in London has announced that professionals and academics employed in the fields of science and technology

who wish to travel to the US to engage in academic or professional activities or attend a conference related to their field will now be required to submit supplementary documentation. This will include completing a DS-157, providing a CV and a complete list of publications, as well as an invitation letter from the sponsor if applicable.

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More Notes of Interest

Here are some additional noteworthy items that came in over the past 30 days...

- The Governor of New York has ordered that driver's licenses be made available to undocumented aliens. The Governor stated that while these undocumented immigrants do not have social security numbers they do have passports for proof of identity and turning these

aliens away “raises serious equal protection issues.”

- The Commonwealth of Virginia's *Illegal Immigration Task Force* rejected a proposal to create the nation's first state run detention facility for illegal immigrants who have been arrested for criminal activity and are awaiting trial or removal from the US. Senator Ken Stolle (R—Virginia Beach) stated that

such a proposal was rejected because “the public envisions some sort of concentration camp.”

- US Citizenship & Immigration Services (USCIS) released the 100 questions and answers that are part of the new citizenship test to commence in October of 2008. The new questions and answers can be found at www.uscis.gov/newtest.



New York's Governor has ordered that driver's licenses be issued to all applicants who have positive identification, regardless of legal status in the United States.

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Links of Interest:

www.state.gov
www.uscis.gov
www.foreignlaborcert.doleta.gov
<http://pds.pbis.doleta.gov>

[http://
maiona.lawoffice.com](http://maiona.lawoffice.com)


M&M, P.C.

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Attorney Maiona has been the keynote speaker at seminars for the Employment Management Association of New England and Sterling Education Services, as well as private recruiting firms on the topic of business immigration law. Attorney Maiona is a contributing author to the Massachusetts Continuing Legal Education's two volume treatise: *Immigration Practice Manual*. Attorney Maiona received his B.A. cum laude from Boston College and his J.D. from Suffolk University Law School. Attorney Maiona is a member of the American Immigration Lawyers Association and on the Executive Board for the New England Chapter of the American Immigration Lawyers Association. Attorney Maiona can be reached at 617-695-2220 x103 or by email at Matthew@maionalawoffice.com

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Absent Congressional Relief, Litigation and Protest Takes Over

In the face of futility, aliens with pending applications have turned to the courts and protests to try and obtain some relief.

The Associated Press and Boston Herald ran a story on October 29, 2007 about high-tech workers in Silicon Valley who marched to protest the personal and professional limbo that the immigrant visa cap has placed on their lives. The article noted the limbo these professionals are placed into because they cannot be promoted until the green card processing is completed. The article highlighted a skilled worker who has been waiting in line for seven years for his green card to be approved due to visa limits and quotas.

Meanwhile an asylum applicant who was afraid to return to



Protest and litigation are the only avenues of relief absent Congressional action.

Honduras due to his fear of forced recruitment into a gang, has won some reprieve from

the Third Circuit when the court in *Valdiviezo-Galdamez v. Attorney General of US*, (2007WL 2554965 (3d Cir. Sept. 7, 2007) held that the government of Honduras was unable and/or unwilling to protect the petitioner. The court found that the petitioner was a member of a particular social group: young, Honduran men recruited by gangs. The court sustained the petitioner's appeal and returned the matter to the Board of Immigration Appeals.

These two stories are encouraging in that aliens both legal and "would-be" legal must continue to press in order to obtain results. Whether it is through the courts or the newspapers, reform will only happen when those with the most to lose stand up and fight.