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Immigration Update

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Increase in EB-5 Investor Visas



The **EB-5 Visa** for immigrant investors was designed to encourage the flow of foreign capital into the U.S. economy and to promote the creation of jobs for U.S. workers. This visa provides an opportunity for foreigners, and their immediate family, to obtain U.S. legal permanent residence ("green card") by investing \$500,000 to \$1 million, and creating at least 10 jobs in the U.S. The applications for these visas have risen significantly in the last year due to the strength of foreign currencies, the decline in U.S. real estate value and offering a faster route to a "green card" for those having to wait many years for an immigrant visa. When fully utilized, it is estimated that the EB-5 program will contribute between \$1.5 - 3 billion annually in foreign capital to the U.S. economy and create and/or preserve more than 30,000 U.S. jobs.

The EB-5 program, though proving to be attractive, is not without challenges. The program rules are constantly changing and the detailed tracking of sources of funds available for investment can be a challenge for many foreign investors.

[Click here for an EB-5 overview sheet provided by Giselle Carson.](#)

[Click here for more information on EB-5s from the USCIS website.](#)

Rules for independent contractor classification may soon change

Two bills, one introduced in the House and the other the Senate, may change how employers can classify certain workers as independent contractors. The Taxpayer Responsibility Accountability and Consistency Act of 2009, introduced by Sen. John Kerry (D-Mass) would alter a previous code and require that a "reasonable basis" be shown by employers who apply for independent contractor status. This change would also affect the "safe harbor" provision of Section 530 of the Revenue Act of 1978 whereby employers would only be able to classify a worker as an independent contractor if the IRS has provided documents to the taxpayer stating the status of employment.

Another bill previously introduced in the House by Rep Jim McDermott (D-Wash) would increase the employer penalty for misclassification of workers as independent contractors. H.R.

3408 includes raising the fine for employers that file an incorrect tax return from \$50 to \$250.

Both bills have been referred to the appropriate Committees in either the House or the Senate.

[Click here to read more about the Taxpayer Responsibility Accountability and Consistency Act of 2009 \(S. 2882\).](#)

[Click here to read more about H.R. 3408.](#)

FY2011 DHS budget request released



Janet Napolitano, the Homeland Security Secretary of the United States, recently released the Fiscal Year (FY) 2011 budget request for the Department of Homeland Security (DHS). "Smart and Effective Enforcement of Immigration Laws" was among the five sections outlined in the budget request. Included in this immigration-specific section was \$103.4M for the E-Verify program, \$146.9M for the Secure Communities program and \$19M for "Immigration Integration" including the Citizenship Grant Program to help ready immigrants for citizenship in the United States.

The inclusion of E-Verify in the budget demonstrates the administration's commitment to employer-based immigration enforcement into 2011.

[Click here to read more about the FY 2011 DHS budget request in a DHS Fact Sheet.](#)

[Click here to read the entire FY2011 budget request.](#)

Immigrants have right to access court review

Just a few short weeks ago, the U.S. Supreme Court decided that immigrants who face being deported and are seeking to reopen their orders for deportation have a right to appeal to federal courts if the case is refused by the immigration court.

Kucana v. Holder was the deciding case for the Supreme Court decision on immigrants access to Court review. In this case, an individual seeking asylum had a change in circumstances that prompted him to file a motion that would reopen the removal proceedings in his request for asylum. After the government denied the motion, the Chicago-based Seventh Circuit Court of Appeals refused to review this decision. The Supreme Court reversed this refusal stating that the authority to review these motions does indeed rest with the courts.

[Click here to read the Kucana v. Holder Supreme Court case.](#)

USCIS releases memo about "employer-employee" relationship for H-1Bs



Associate USCIS Director, Donald Neufeld, issued a memo to provide guidance on the "employee-employer relationship" as it pertains to H-1B visa petitions. The clarification is particularly important if an employer utilizes independent contractors, self-employed beneficiaries or third-party worksite beneficiaries.

Also included in the Neufeld memo is a discussion of what evidence is required to prove that an "employee-employer relationship" exists and will continue to exist during the H-1B period requested.

An H-1B is a non-immigrant visa used for "specialty occupations" including professors, accountants, engineers and other specialized fields that typically require a bachelor's degree or equivalent.

[Click here for the USCIS Q&A about this memo.](#)

[Click here for the Donald Neufeld memo.](#)

ICE employs social media for outreach

You can now follow U.S. Immigration and Customs Enforcement (ICE) on popular social networking sites and YouTube. The agency has employed these new online information outlets in order to keep the public up-to-date on important ICE investigations and initiatives and provide a way to engage and educate individuals about ICE.

[Click here to follow ICE on Twitter.](#)

[Click here to visit ICE's YouTube channel.](#)

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