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Immigration Update

In the April 2010 issue

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Dear Martha,

Interested in reading about immigration issues as they happen? Sign up for my blog. The e-Newsletter will still be available, but the blog will be updated on a more frequent basis - as the news happens. [Click here to visit my blog and sign up as a follower.](#)



Supreme Court says attorneys must advise non-citizens of plea consequences

The U.S. Supreme Court held last week in a 7-2 decision that defense counsel must inform a non-citizen client whether his/her plea carries a risk of deportation, a failure to do so violates the Constitution's Sixth Amendment guarantee of the right to counsel in criminal cases.

In *Padilla v. Kentucky*, the criminal defense attorney representing Mr. Padilla told him that he did not have to worry about the consequences of his guilty plea on his immigration status because he had been in the U.S. for so long. This legal advice was incorrect. After legally living in the U.S. for over 40 years, Mr. Padilla faces deportation as a result of his guilty plea. Whether Mr. Padilla is entitled to relief from deportation depends on whether he was prejudiced, a matter to be addressed by the Kentucky court.

In arriving at this decision, the Court noted "immigration law can be complex, and in it is a legal specialty of its own. Some members of the bar who represent clients facing criminal charges may not be well versed in it." In his concurrent opinion Judge Alito indicated "the professional organizations and guidebooks on which the Court so heavily relies are right to say that nothing is ever simple with immigration law".

[Click here to read more about the Padilla v. Kentucky case.](#)

Update on comprehensive immigration reform

With the nation's economy still struggling and bank bailout news continuing to make headlines, the Obama administration's immigration reform plan and bill may not be the next big issue following on the heels of the recent health care reform bill.

Even if comprehensive immigration reform takes a "back seat" for a while, individual members of Congress are tackling specific immigration issues and proposing legislation in the process. For example, Senators Charles E. Schumer (D-NY) and Lindsey Graham (R-SC) have laid out a plan

that tightens border security, uses Social Security card biometric technology, and guides immigrants who are currently in this country illegally to get on a path to legal status or citizenship.

We will continue to bring you updates on the status of comprehensive immigration reform.

E-Verify initiatives to improve efficiency and accuracy

DHS Secretary Janet Napolitano and USCIS Director Alejandro Mayorkas recently joined forces and introduced three new initiatives to improve efficiency and accuracy of E-Verify.



These initiatives are (taken from the USCIS press release):

1. "Streamline the adjudication process in cases of E-Verify misuse and discrimination,"
2. "An informational telephone hotline for employees to provide a more timely, effective and seamless customer experience for workers seeking E-Verify information,"
3. "New training videos focusing on E-Verify procedures and policies, employee rights and employer responsibilities in English and Spanish."

E-Verify is a free, web-based tool to verify employment eligibility of an employers workforce and new employees. As with any system, there are some pitfalls to be aware of before using. It is important to review the MOU prior to enrolling and understand its requirement. The MOU gives DHS the right of access to business records and to audit the employer to ensure that program requirements are being met. It is also important to watch for errors in the E-Verify database to help prevent lawful employees from being terminated.

Some federal and state government-based contracts now contain an E-Verify clause requiring employers to use E-Verify to check the status of their workforce before being awarded the government contract.

[Click here for more information about the new E-Verify initiatives.](#)

Proposed legislation for new visa category

Two Senators (John Kerry, D-MA and Richard Lugar, R-IN) recently proposed legislation that would create a new EB-6 visa category for entrepreneurs. The *Startup Visa Act of 2010* would permit an immigrant entrepreneur with a startup venture or business to secure a two year visa if that entrepreneur proves to have a U.S. investor that is capable of investing at least \$250,000.

Currently, the EB-5 visa category is the option available to immigrant entrepreneurs and requires either a \$500,000 or \$1 million investment from the foreign investor (depending on the location of the venture). The new business must also create a certain number of jobs to qualify for the EB-5.

[Click here to read the press release about this legislation on Richard Lugar's website.](#)

[Click here to read the press release about this legislation on John Kerry's website.](#)

The K-1 visa process: tips to navigate the fiancé visa

The K-1 Visas are popular family-based visas for foreign national fiancés of U.S. Citizens to obtain legal permanent residence in the United States. The process can be confusing and includes many time-sensitive steps that applicants should understand before beginning the process. Recently, I have had the privilege of assisting several couples from European and Latin American countries through this process, from the filing of the I-129F petition for a K-1 Fiancé Visa to the Adjustment of Status (AOS) to obtain permanent residency.

An overview of the K-1 visa process:

1. File the visa petition - including Forms I-129F, G-325A and all documents required by USCIS.
2. Embassy review - the local embassy will review the file, visa application, and additional supporting documents and conduct the applicant interview.
3. Approval! - a successful application and interview process should lead to a visa approval which is typically issued within three days to one week of the visa interview.
4. Entry to the U.S. - Within a six month period of the visa issue date, the individual must travel to the U.S. where an immigration officer at the port of entry will again review the case and grant legal entry to the visa holder.

Tips for the K-1 visa:

- You must marry within 90 days of the entry to the U.S. and file for AOS.
- Start the marriage plans before the foreign national arrives in the U.S. Many states require a waiting period between applying for the marriage license and actually tying the knot.
- If you have not yet received your AOS as a permanent resident, ensure that you have all appropriate documentation in order before traveling outside the U.S.
- The K-1 visa is a one-time entry visa. As part of the adjustment of status, you need to apply for an advance parole document to travel outside of the U.S.

[Click here for more information about the K-1 visa from the U.S. Department of State.](#)

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