



January 2010 Immigration Update



Topics: ICE Audits 1,000 Employers in November; H-1B Quota or Cap; E-Verify News; REAL ID Material Compliance; Visa Application Changes at the U.S. Embassies; ICE News.

[Click here for January Visa Bulletin](#)

Federal E-Verify FAR Questions: 90 or 180 days to E-Verify existing employees? How far do you go in requiring subcontractors to use E-Verify? For answers to these thorny questions and more, please see our December 2009 Update. [Click here.](#)

DHS and ICE on Worksite Enforcement.

On Dec. 11, 2009, Secretary Napolitano presented an overview of the latest worksite enforcement measures and E-Verify updates to Congress. Secretary Napolitano emphasized that worksite enforcement measures target the “most egregious” violators — those who abuse and exploit their workers, aid in the smuggling and trafficking of aliens, and create false identity documents. She commented that ICE is also auditing the books of thousands of employers suspected of relying on illegal labor to achieve an unfair advantage in the marketplace. Indeed, in a single day this past July, ICE audited more employers suspected of hiring illegal labor than had been audited in all of last year, reviewing more than 85,000 Form I-9s and identifying more than 14,000 suspect documents. In November 2009, ICE announced an additional 1,000 workplace audits. So far, ICE has refused to disclose the nature of the companies being audited. As previously reported, USCIS is auditing about 25,000 employers annually for compliance with H-1B requirements.

DHS on E-Verify and other DHS Accomplishments. Secretary Napolitano pro-

vided an overview of the E-Verify program which highlighted the greatly expanded participation in E-Verify with over 175,000 employers representing more than 660,000 worksites currently enrolled and an average of 1,000 new employers enrolling weekly. Other accomplishments include adding U.S. passport data to the system, launching the Compliance Tracking Management System, and the Federal Acquisition Regulation (FAR) implementing the E-Verify federal contractor rule. Next year USCIS plans to include passport and visa photos to further increase the system’s effectiveness.

New Address for E-Verify Photo Tool Case Resolution.

When E-Verify users are presented a photo by the employee that does not match the photo in E-Verify, the employer must notify the employee of the discrepancy. If the employee contests, the employer must send a copy of the document to DHS. The photo can be sent by scanning and uploading a copy of the document or sending a copy of the photo along with the DHS referral letter to the following new address:

U.S. Citizenship and Immigration Services
10 Fountain Plaza, 3rd Floor
Buffalo, NY 14202
Attn: Status Verification Office- Photo Tool

H-1B Cap Reached. USCIS announced that they received a sufficient number of H-1B petitions to fill the Fiscal Year 2010 H-1B cap. Dec. 21, 2009 was the final receipt date of H-1B petitions. A computer-generated random selection process was applied to all petitions received on

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Dec. 21 in order to select what petitions would be used to satisfy the cap of 65,000.

Form DS-160 Slowly Replacing DS-156 and DS-157. The new DS-160, Nonimmigrant Visa Electronic Application, is a fully integrated online application form that will be used to collect the necessary application information from persons seeking a nonimmigrant visa. The DS-160 will be submitted electronically to the Department of State via the Internet. Consular officers will use the information entered on the DS-160 to process the visa application and, combined with a personal interview, will determine an applicant's eligibility for a nonimmigrant visa. [View Frequently Asked Questions](#) about the form DS-160. Currently, only a handful of U.S. embassies and consulates are using Form DS-160 so nonimmigrant visa applicants are strongly encouraged to check the applicable U.S. embassy website to ensure they are using the correct form prior to their interview. [Click here for the form.](#)

Nonimmigrant visa applicants at the following U.S. embassy and consulate locations are required to apply using the online DS-160:

- **Algeria;** Algiers
- **Australia;** Melbourne, Perth, and Sydney
- **Bermuda;** Hamilton
- **Canada;** Montreal and Vancouver
- **Hong Kong**
- **Iraq;** Baghdad
- **Ireland;** Dublin
- **Libya;** Tripoli
- **Mexico;** Ciudad Juarez, Hermosillo, Matamoros, Merida, Monterrey, Nogales, Nuevo Laredo, and Tijuana
- **Montenegro;** Podgorica
- **Russia;** Moscow, St. Petersburg, Vladivostok

DHS Final Rule on Stay of REAL ID Material Compliance Date. On Dec. 28, 2009, DHS issued a final rule in the Federal Register that stayed the Jan. 1, 2010 date that states must be in

material compliance with the REAL ID ACT of 2005. DHS will lift the stay and announce any new compliance dates by publication in a document in the Federal Register. The REAL ID Act of 2005 (the Act) prohibits federal agencies, as of May 11, 2008, from accepting a driver's license or personal identification card for any official purpose unless the license or card has been issued by a state that is meeting the requirements set forth in the Act. The REAL ID Act of 2005 is a U.S. federal law that imposes certain security, authentication, and issuance procedure standards for the state driver's licenses and state ID cards, for them to be accepted by the federal government for "official purposes" as defined by the Secretary of Homeland Security. The Secretary has defined "official purposes" as presenting state driver's licenses and identification cards for boarding commercially operated airline flights and entering federal buildings and nuclear power plants.

ICE News: California pastor charged in visa fraud scheme. Foreign nationals allegedly paid defendant thousands for aid in illegally obtaining student visas. A Korean-born pastor who owns and operates a religious school in Fullerton, Calif., is expected to make his initial appearance in federal court to answer to charges that he used the school as a front for an elaborate student visa fraud scheme, going so far as to hand out phony diplomas and stage graduation ceremonies.

According to the affidavit filed in support of the criminal complaint, a confidential source familiar with the pastor's business dealings alleged he collected \$40,000 to \$50,000 a month in fees from foreign "students" who received Form I-20s from CUU certifying their eligibility for academic study. The Form I-20 enables prospective students to go to a U.S. embassy or consulate abroad and apply for a student visa. Until October, when its federal certification was revoked, CUU was authorized by the Department of Homeland



Security to accept foreign students pursuing an education in religious and biblical studies, English as a Second Language (ESL) and Oriental medicine. [Click here for more information.](#)

For more information on these and other immigration developments, please contact Kathryn Carmichael at kcarmichael@williamsmullen.com, Alyson Fickenscher at afickenscher@williamsmullen.com, or Eliot Norman at enorman@williamsmullen.com

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