



[www.llmlaw.com](http://www.llmlaw.com)

[immigration@llmlaw.com](mailto:immigration@llmlaw.com)

LL.M. Law Group  
Immigration News  
September 25, 2007

**September 25, 2007**

### **Justice Department Seeks to Invalidate Illinois Law Flouting Federal Immigration Efforts**

The Department of Justice today filed a lawsuit in federal district court seeking to invalidate an Illinois state law that attempts to prevent employers from using DHS's E-Verify system, which allows them to check in real-time whether new hires are authorized to work in the United States. The lawsuit seeks a declaration that a law passed earlier this year by the Illinois legislature and signed by the Governor that prohibits employers from enrolling in the Department's E-Verify system is invalid.

"E-verify or the Basic Pilot Program, authorized by Congress, is the on-line system that allows employers to verify whether new hires are allowed to work in the United States," said Carl Nichols, Deputy Assistant Attorney General for the Justice Department's Civil Division. "Today's lawsuit seeks to invalidate an Illinois state law that frustrates our ability to assist employers in making sure their workforce is legal, and in doing so conflicts with federal law."

### **New Rule for Nonimmigrant Victims of Criminal Activity**

The United States Citizenship and Immigration Services (USCIS) will publish a new interim rule that outlines eligibility and approval requirements for the U nonimmigrant classification. Victims of criminal activity may apply for a "U" visa if they can meet the following requirements: (1) Suffered substantial mental or physical abuse because of the criminal activity at issue; (2) Have information regarding the criminal activity at issue; and (3) Are willing to assist government officials in the investigation of the crime. Individuals granted U nonimmigrant status may remain in the United States for up to four years and may be accompanied by eligible family members. Additionally, such individuals will benefit from assistance from nongovernmental organizations and will receive automatic employment authorization. A limited number of 10,000 U visas will be available every fiscal year.

## **USCIS Application and Receipting Update**

Due to the significant increase in applications filed, the U.S. Citizenship and Immigration Services (USCIS) is behind schedule in its entry of cases and processing of fee payments tracking system. As a result, customers are advised to expect delays in receiving receipt notices.

### **No justice with “No Match Rule”**

The U.S. Congress intended to implement a new “no-match” rule according to which employers would have to resolve discrepancies between their employees’ records and those of the Social Security Administration and the Department of Homeland Security. Pursuant to the new rule, when the Social Security Administration or the Department of Homeland Security notifies an employer of a discrepancy involving a Social Security Number or any immigration status information, the employer would have 90 days within which to re-verify the information. If such discrepancies are not corrected within the period given (90 days), the employer is left with two options: (1) either fire any worker who could not produce a number the SSA could verify; or (2) continue the employment, and risk severe civil and criminal sanctions from the Department of Homeland Security. The new regulation assumes that anyone who can’t provide a verified Social Security number is in the country illegally. There are over 12 million people in the United States that have no legal immigration status. In order to be able to get a job, they have to present a valid Social Security number to their prospective employer. As a result, some of these people use invented numbers, others borrow existing numbers that belong to someone else. If the new rule were to be implemented as announced, as many as 8 to 9 million undocumented immigrants would lose their jobs and thus have no means to buy food, pay rent, or support their families. However, the new rule would affect not only the workers, but also their employers. Industries such as agriculture, meatpacking, construction, hotels, food service, and health care depend on immigrant labor. Forcing business in these areas to lay off a big part of their workforce would bring them to a halt. On the other hand, discrepancies between employees’ records and those of the Social Security Administration and the Department of Homeland Security can also occur as a result of typographical errors, name changes due to marriage or divorce, or use of multiple surnames. According to some recent statistics, it appears that there are over 17.8 million no-matches, and over 70 percent of the numbers involved are used by U.S. citizens.

The new rule has been challenged by several organizations that filed a law suit, among which the AFL-CIO, the Alameda County and San Francisco Central Labor Councils, and the San Francisco Building Trades Council. In San Francisco, U.S. District Judge Maxine Chesney ruled in favor of unions, along with the ACLU and the National Immigration Law Center. The Court concluded that the “no-match” rule would violate workers’ rights and impose burdensome obligations on employers.

To sum up, the Congress’ “no-match rule” proposal would have resulted in mass firings of workers. However, an effort by the labor and immigration movements has led courts

to intervene and halt the plan, at least for now. However, regardless of what happens to the “no-match” rule, employers are strongly encouraged to conduct an internal audit of their I-9 process.

### **E-Verify**

E-verify is a new web-based system that will help verify the employment eligibility of newly hired employees. E-Verify is a partnership between the Department of Homeland Security and the Social Security Administration. It works electronically, it is free, and simple to use. The main goal of E-Verify program is to protect jobs, for authorized U.S. workers, and to ensure legal workforce in the United States.

### **Visa Bulletin for October 2007**

This Visa Bulletin shows the availability of immigrant visa numbers for the month of October, 2007. Most prospective immigrants to the United States are subject to immigrant visa quota restrictions. Since the quota is full for some categories, and in order to fairly apply these quotas, the law provides for a waiting list. The waiting list is based on the **priority date**. The priority date regulates who is eligible to apply for adjustment of status to permanent resident. The priority date is of highly importance. It represents the date when the prospective immigrant took the first official step and filed his/her case in order to immigrate to the United States. For family-based petitions on the one hand, the priority date is the date when the United States Citizenship and Immigration Services (USCIS) first received the immigrant petition (Form I-130). For employment-based petitions on the other hand, the priority date is the date when the application for labor certification is received by the Department of State, or in the case no labor certification is required, the date when the Immigration Petition for Alien Worker (Form I-140) was filed.

On the same list, the Department of States provides a certain date for each category of preferences, for both family-based and employment-based immigrant applications. This is known as the **cut-off date**, and is also of great importance. There is a certain number of visas available for each category. Whenever the number of applicants for one category exceeds the number of visas available for that particular category, it will be deemed as “oversubscribed.” This is when a cut-off date is established. The cut-off date will be the priority date of the first applicant who is subject to the annual immigrant visa quota and who could not be accommodated for a visa number.

Whenever the priority date is earlier than the cut-off date published by the Department of State, the prospective immigrant may apply for adjustment of status. If the priority date is not earlier than the cut-off date, the prospective immigrant needs to wait until the cut-off date passes their priority date. The earlier the priority date, the quicker the prospective immigrant may apply for the green card.

Immediate relatives of U.S. citizens (spouses, parents and children) are not subject to numerical limitations. All other immigrant petitions for alien relatives will fall under the following categories and are subject to numerical limitations.

- (1) Unmarried sons and daughters of U.S. citizens
- (2) Spouses and children, and unmarried sons and daughters of permanent residents
- (3) Married sons and daughters of U.S. citizens
- (4) Brothers and sisters of U.S. citizens

<b>Family</b>	<b>All Chargeability Areas Except Those Listed</b>	<b>China-mainland born</b>	<b>INDIA</b>	<b>MEXICO</b>	<b>PHILIPPINES</b>
1st	08NOV01	08NOV01	08NOV01	01MAY92	15JUN92
2A	15NOV02	15NOV02	15NOV02	01MAY02	15NOV02
2B	15AUG98	15AUG98	15AUG98	15MAR92	08DEC96
3rd	15FEB00	15FEB00	15FEB00	01MAY92	22FEB91
4th	15APR97	15AUG96	08MAY96	22JUL94	08JUL85

\*NOTE: For October, 2A numbers EXEMPT from per-country limit are available to applicants from all countries with priority date earlier than 01 MAY 02. 2A numbers SUBJECT to per-country limit are available to applicants chargeable to all countries EXCEPT MEXICO with priority dates beginning 01 MAY 02 and earlier than 15 NOV 02. (All 2A numbers provided for MEXICO are exempt from the per-country limit; there are no 2A numbers for MEXICO subject to per-country limit.)

The number of immediate relatives who obtain visas are subtracted from the total number of family-sponsored visas available. However, no matter how many immediate relatives immigrate to the U.S. in a single year, a floor of at least 226,000 visas will remain available to persons in the four family preference categories shown above.

There has been a marked jump for Mexico in the third preference from February 8, 1988 to May 1<sup>st</sup>, 1992, and in the fourth preference from September 1<sup>st</sup>, 1990 to July 22<sup>nd</sup>, 1994.

	<b>All Chargeability Areas Except Those Listed</b>	<b>China-mainland born</b>	<b>INDIA</b>	<b>MEXICO</b>	<b>PHILIPPINES</b>
<b>Employment-Based</b>					
1st	C	C	C	C	C
2nd	C	01JAN06	01APR04	C	C
3rd	01AUG02	01SEP01	22APR01	22APR01	01AUG02
Other workers	01OCT01	01OCT01	01OCT01	01OCT01	01OCT01
4th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
5th	C	C	C	C	C
Targeted Employment Areas/Regional Centers	C	C	C	C	C

There has been a marked jump in the first preference from 01 JAN 07 to Current. There has also been a marked jump in the second preference for “All Chargeability Areas Except Those Listed” category and Mexico and Philippines categories from 01 JAN 07 to Current. As far as the third preference category is regarded, the new cut-off date for China category is 01SEP01, whereas for India and Mexico categories is 22 APR 01. The cut-off date for the “Other Workers” category has changed from Unavailable to 01 OCT 01. According to the October Visa Bulletin, all the visa numbers for the remaining categories, such as the fourth preference, “Certain Religious Workers,” the fifth preference and “Targeted Employment Areas/Regional Centers” are now current.

LL.M. Law Group  
53 W. Jackson Boulevard  
Suite 409  
Chicago, Illinois 60604  
[www.llmlaw.com](http://www.llmlaw.com)

National: (877) 8800-USA (872)  
Local: (312) 8800-USA  
Fax: (312) 880-0870  
Web: [www.llmlaw.com](http://www.llmlaw.com)  
E-mail: [immigration@llmlaw.com](mailto:immigration@llmlaw.com)