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Welcome to the inaugural issue of *Amy's Immigration Update*. You are receiving this newsletter because of your interest in immigration issues. See the bottom of this e-mail for links [to unsubscribe or update](#) your profile.

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Selective Service System

Introduction

The immigration and visa process can be incredibly complex and quite confusing. Procedures constantly change and rules sometimes seem to make no sense. Clients and others involved in the immigration system are best served when they understand the law, the requirements, and the process. A regular update is one way to keep those involved or interested informed and educated.

Starting with this inaugural issue, this monthly immigration law update will provide immigration-related news, developments, and trends on topics that are of interest to my readers. While it will focus on my core areas of practice — employment-based visas for the highly skilled, G-4 international workers, J-1 waivers, adoption, family-based cases, naturalization, and waivers of inadmissibility — topics of general interest also will be covered. In addition, as a Washington, DC-based practice, this update will focus on immigration legislation and related news from Capitol Hill and the Administration. Comprehensive immigration reform — or at least lots of talk about it — will, I believe, dominate the news in the early part of 2010.

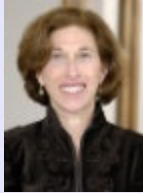
As is frequently the case during the course of representation, new immigration laws, regulations, or interpretations are implemented and have an impact on case planning and preparation. I hope this update will help current and new clients stay a couple of steps ahead of the curve and prepare for their short- and long-term immigration goals accordingly.

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H-1B Professional Visa Cap Reached in Late December

On December 21, U.S. Citizenship and Immigration Services (USCIS) announced that it had received a sufficient number of cap-subject H-1B temporary professional visa petitions for employment commencing during the current fiscal year, October 1, 2009 to September 30, 2010. Cap-subject employers seeking to employ new professional workers now must wait until April 1, 2010, to file new

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petitions for employment commencing October 1, 2010.

Under the immigration laws, visas for professional specialty workers are capped at 65,000 per fiscal year. Another 20,000 visas are available to workers with advanced degrees (masters or higher) obtained at U.S. institutions of higher education. Of the total 85,000 H-1B visas available, some 6,800 visas are set aside each year for nationals of Chile and Singapore (a maximum of 1,400 for Chile and 5,400 for Singapore). While not all H-1B applicants are subject to the cap, the vast majority in business are.

As a real sign of how the weak economy has eroded employment even among highly trained professionals — H-1B visas are typically used to provide skilled workers to top-tier U.S. technology, financial services, and other business sectors — for the first time since 2003, H-1Bs remained available for almost nine months after the U.S. government began accepting applications. Even last year with the recession beginning to take hold, employers snapped up the 65,000 visas available in just one day, as they had for the past several years. In addition to the weak economy, companies also have become more reluctant to petition for foreign workers in the face of rising costs and greater governmental scrutiny associated with the visa program. As an added disincentive, companies that received TARP federal bailout funds were required to prove they have tried to recruit American workers at prevailing wages and that foreigners are not replacing U.S. citizens.

Even though the cap has been reached for this fiscal year, some H-1B petitions can still be filed because they are exempt from the numerical cap. These include petitions filed by institutions of higher education or related or affiliated nonprofit entities, nonprofit research organizations, and governmental research organizations, as well as petitions for physicians with certain J waivers. Also, petitions filed on behalf of current H-1B workers who have previously been counted against the cap are not counted again. This means H-1B petitions for extension of status, change of employment, and concurrent employment may be submitted at any time.

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Immigration Reform in 2010? Rep. Gutierrez Takes Important First Step

On December 15, Congressman Luis Gutierrez (D-IL) introduced in the U.S. House of Representatives the Comprehensive Immigration Reform for America's Security and Prosperity Act of 2009 (H.R. 4321), a much anticipated immigration reform bill. The bill, CIR ASAP, represents an important first step forward in overhauling our nation's broken immigration system. It also represents much collaborative behind the scenes legislative and political work undertaken by members of Congress, officials in the Obama Administration, and immigration advocacy and labor organizations.

The bill is the first major, comprehensive immigration initiative introduced in Congress since 2007, and contains many of the core principles considered vital to any comprehensive immigration reform effort. These include a pathway to legalization for

undocumented workers and students; family unity and labor provisions; smarter and more effective enforcement; improved worker verification systems; and increased visa numbers and backlog reductions. The 600+ page bill has some 90 co-sponsors, all of whom are Democrats. For a [comprehensive summary of the bill](#), see one prepared by the American Immigration Council.

In the Senate, Senator Charles Schumer (D-NY) is expected to introduce the Senate's version of comprehensive immigration reform in early 2010. Sen. Schumer is stepping in to fill the role played by Senator Kennedy, who was an immigration champion and was able to bring together a broad coalition of "strange" bedfellows to support previous attempts. Sen. Schumer's bill is expected to be introduced as a bipartisan one co-sponsored by Sen. Lindsay Graham (R-SC), and, as such, is likely to be tougher on enforcement and less generous on benefits. In the end, however, whatever is enacted in each chamber ultimately will have to be reconciled before an immigration reform bill can be passed and become law.

Debate on these bills is expected to commence in the Senate first and possibly as early as this spring.

In the meantime, White House staff and Department of Homeland Security officials having been meeting with immigration experts to get their insights on what provisions should be included in reform legislation, in part, to ensure that whatever is enacted represents meaningful reform and does not abound with unintended consequences.

And, Homeland Security Secretary Janet Napolitano has gone on record urging the enactment of comprehensive immigration reform. Noting that her agency has tightened the borders, she has stated that the nation now needs new laws to strengthen national security, meet global economic demands, improve the legal flow for families and workers, and rationally deal with undocumented immigrants in the United States. President Obama too has indicated that he wants Congress to pass an immigration bill in 2010, but not until Congress passes legislation to reform health care and possibly energy.

As we look to the legislative calendar for the first quarter of 2010, there remain a number of unknowns. Will energy reform — another campaign pledge of President Obama's and potentially a costly one — become the next domestic priority, ahead of immigration? Will the debate on immigrants in a new health care system vet difficult issues and help pave the way for immigration reform or hinder it? Democrats who threatened to block health care unless undocumented immigrants were able to get coverage are likely to back the final health care compromise if the White House offers a firm commitment to dealing with the immigration issue this year. Will the costs associated with these reforms play a role in their timing?

As the debate on immigration reform unfolds over the next several months, this update will provide readers with updated information on what to expect and how they can prepare if reform becomes a reality. In the meantime, those interested are encouraged to weigh in with their elected representatives. Only 279 votes and one signature are needed to get comprehensive immigration reform enacted (218 House of Representatives, 60 Senators, and a

signature by President Obama).

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Test the Waters?

'Extraordinary Ability' Employment-Based Visas Can Be Approved in 15 Calendar Days

Some highly skilled professionals, even those who hold long-term nonimmigrant visa status (G-4 international workers, O extraordinary ability nonimmigrants, E treaty trader and investors) and who are not currently seeking a job change, may want to consider exploring their options by applying for an extraordinary-ability immigrant visa. While this visa category is reserved for those foreign nationals with top credentials, visa are immediately available — there is no backlog for any country — and individuals can self-petition; they do not need an offer of employment. Moreover, under rules that were issued in June, these cases can be processed under “premium processing.” In other words, for an additional \$1,000 filing fee, USCIS will adjudicate the case within 15 calendar days. While this category clearly is not available to everyone, eligible foreign nationals can complete this first step in the two-step green card process and find out if obtaining a green card this way is a viable option. Successful extraordinary-ability case examples from my practice include professors, economists, research scientists, gallery owner, photographer, and others.

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Family-Based Adjustment of Status and Naturalization Applications Moving Quickly

According to USCIS processing times for the Washington, DC metro area, naturalization cases are taking only five months from application to interview; adjustment of status cases for immediate relatives are taking from about five to eight months. This is a tremendous improvement in processing times for these types of cases; in the past, naturalization applications had been taking up to two years. With filing fees likely to increase in the near future according to USCIS and the current quick turnaround, now may be the best time for eligible individuals to file.

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Interviewed But Still Waiting?

Consider Filing a Mandamus Suit To Overcome Naturalization Delays

Many applications for naturalization remain undecided by USCIS even after the applicant has been interviewed. This may happen because USCIS cannot obtain the needed FBI name check or because it is inefficient. Under the immigration laws, a special provision permits an applicant who has been interviewed and still waits to file a mandamus suit in federal district court to compel USCIS to act. The case, however, must be pending for at least 120 days after the interview before a suit can be filed.

Filing a naturalization mandamus action is relatively easy,

inexpensive, and achieves results — it gets the case decided. That's because U.S. Attorneys don't like them and judges don't like them. U.S. Attorneys don't like to appear before a judge on a matter that should have been decided administratively; judges consider them a waste of valuable judicial resources.

Typically, upon service of the law suit, the U.S. Attorney contacts the local USCIS attorney in charge of naturalization applications and requests that the case be adjudicated. The USCIS counsel directs an adjudicator to review the case and make a decision. Mandamus actions usually result in the case being decided within several months. While mandamus does not guarantee a favorable decision, it does compel that a decision be made.

If you've had your naturalization interview and more than 120 days have passed without a decision, contact me and consider filing a mandamus suit.

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About Amy R. Novick

Amy's Immigration Update is written by Amy R. Novick of Washington, DC. Ms. Novick practices immigration law exclusively, maintaining a solo practice and serving as Of Counsel to The Haynes Immigration Law Firm.

A lawyer, writer, and frequent speaker in the field of immigration law for over 25 years, Ms. Novick specializes in employment-based cases, J-1 waivers, family-based cases, adoption, naturalization, and immigration compliance.

Prior to her association with The Haynes Immigration Law Firm, Ms. Novick was a shareholder at the immigration law firm of Maggio & Kattar. Before that, she served as Deputy Director of the American Immigration Lawyers Association (AILA), the premier bar association for U.S. immigration attorneys.

Ms. Novick remains active in AILA and other bar associations, serving as chair and faculty member of several conferences. She is also a founding member of the Board of Directors of the University of the District of Columbia David A. Clarke School of Law's Center for Immigration Law and Practice and a member of the American Immigration Council's Board of Trustees, where she chairs its Annual Events Committee and participate as a member of the Council's Exchange Visitors Program. In addition to practicing immigration law, she is the Executive Director of Immigrants' List, the leading bipartisan, pro-immigration political action committee supporting pro-immigration candidates for Congress.

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