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Volume VII Issue 1



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LAW GROUP

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[FAQs](#)

[Press](#)

## Immigration News Update

January 26, 2011

Greetings loyal readers,

Welcome to the first issue of our Immigration News Update for 2011! We hope all of you had a wonderful Holiday Season, and are now rested and ready to make your voices heard on a very serious issue - immigration reform.

Our politicians need to hear from you.

A few things stand out when I look back on 2010. First, it didn't start well when the USCIS issued the Neufeld Memo and changed long-standing procedures in H-1B visa processing. When our economy was struggling, tightening the noose on Information Technology consulting companies was unwise policy. If anything, it further hurt our economy by stifling job creation and driving talented professionals out of the country.

Fraud and technical violations exist in the H-1B program. However, a knee-jerk reaction by our Government to combat fraud also hurts companies who do their best to comply with our immigration laws. There are better and smarter ways to combat H-1B fraud than how the USCIS chose to do it last year.

Another big loser in 2010 was the whole idea of Comprehensive Immigration Reform (CIR). If someone had asked me four years ago whether we'd have CIR by now, I would have said 'absolutely.' At the time, our immigration system was broken and needed reform. It was in both political parties interest to make it happen. Yet, four years later, our immigration system is still badly broken. What we have now is anti-immigrant rhetoric, political posturing,

[Immigration Newsletters](#)

[Philanthropy](#)

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[Immigration Links](#)

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and a lack of national compassion.

This lack of compassion was no more evident than the failure of the DREAM Act last year.

Some opponents of the DREAM Act said that it was imperfect. That's probably true, but is any bill really perfect? Other opponents of the DREAM Act said they supported its basic premise, but wanted it in a CIR bill. (**See** NC Senator Kay Hagen.) I think that's a politician's way of 'copping out.' We all know that CIR is impossible as long as we blur the line between illegal and legal immigration policy, have a bad economy and continue fueling vitriolic dialogue in a viral world.

The DREAM Act, or something like it, is important to the United States.

I hear over and over that we are a nation of laws, and those laws have to be enforced. That's true, but in addition to being a nation of laws, we are also a nation of people. It's easy for a politician to vote 'no' on the DREAM Act. They don't have to see the fear in a person's eyes when they are told they can be deported, after they have desperately tried to explain that they entered the U.S. at age 1 and know no other country but this one.

These children did not intentionally break any laws. When their parents brought them to the U.S., they were so young they wouldn't know the difference between legal and illegal immigration. Now, decades later, should we send these children back to countries where they will be total strangers? As a nation of people, we have to ask ourselves whether the punishment fits the crime?

This year, I hope that we rationally think about these important issues and the impact they have on individuals and families. Even if CIR is impossible in this political and economic climate, our Government should introduce smaller bills to fix pieces of our immigration system and put these bills to a vote. Bills such as the DREAM Act, Startup Visa Act and others to update our outdated immigrant visa allocation system would go a long way in moving immigration in the right direction for the United States.

Sincerely,

Murali Bashyam

Bashyam Spiro LLP - Managing Partner

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## **NEWS BRIEFS**

[Tri-Valley University Students Face Deportation](#)

[Help Us Redesign \[www.bashyamspiro.com\]\(http://www.bashyamspiro.com\)](#)

[Your Invitation to Bashyam Spiro's 2011 Immigration Webinar Series](#)

[Latest H-1B Cap Count: \*It's Almost Done!\*](#)

[Are 21% of all H-1B Petitions Fraudulent?](#)

[The Wait Continues: \*February 2011 Visa Bulletin\*](#)

[Immigration for Spouses and Children: \*The Visa Roller-Coaster Ride!\*](#)

[New Countries Added to H-2A and H-2B Programs](#)

[USCIS Postpones Export Control Certification](#)

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### **Tri-Valley University Students Face Deportation**

This week, hundreds of students could face deportation from the US after Tri-Valley University, located in Pleasanton in the Silicon Valley, was raided by the US immigration and customs enforcement (ICE), last week.

**Read more:** <http://www.hindustantimes.com/Indian-students-in-trouble/H1-Article1-654440.aspx>

Tri-Valley University, has been charged by federal investigators with being part of an effort to defraud, misuse visa permits, money laundering among other crimes.

We have begun receiving calls at Bashyam Spiro for legal advice regarding this matter. We highly recommend that all of those impacted by this unfortunate situation contact a licensed and reliable immigration attorney to discuss their immigration options. Should any of the students need immigration advice, please do not hesitate to call us at: 919-833-0840

### **Help Us Redesign [www.bashyamspiro.com](http://www.bashyamspiro.com)**

Since our founding, Bashyam Spiro has grown by leaps and bounds. That said, we've outgrown our website - and we're excited to unveil a new site that better represents who we are, what we do, and who we serve.

To do this properly, we need your feedback. We're fielding a website user survey that consists of just a few questions. We want to know why you come to our site, and how you think we can improve it.

Here is the survey: <http://www.bashyamspiro.com/blog/bashyam-spiro-web-survey/>

It'll take you just 5 minutes to complete it - and we'd love to hear from you.

## **Your Invitation: 2011 Immigration Webinars**

Our last Webinar provided attendees with a summary of 2010's most compelling immigration topics and Bashyam Spiro's immigration attorney's predictions for 2011. If you missed this web event you can download the full presentation and share it with other via our [Slideshare Channel](#). You may also visit our [Media Library](#) to watch archived Web seminars on a variety of immigration-related topics.

In 2011, we're be asking for your input in selecting webinar topics that interest *you!* We want your feedback and have made it easier than ever for you to communicate with us through our [Seminars/Training](#) page!

If you are an employer or foreign national employee and want to latest tips, trends and best practices in the PERM labor certification process, this Webinar is for you.

### **Webinar: Latest Trends in the PERM Labor Certification Process**

Date: Wednesday, February 16, 2011

Time: 12:30 PM - 1:00 PM EDT

Registration Web Link: <https://www2.gotomeeting.com/register/305450610>

These web events are easy to participate in. Participants only need a telephone and a computer with an Internet connection.

### **Latest H-1B Cap Count - It's Almost Done!**

The United States Citizenship and Immigration Service (USCIS) updated its H-1B cap count on January 14, 2011. Here are the most recent cap numbers:

*Regular H-1B Cap:* 60,700

*U.S. Masters H-1B Cap:* 20,000 (Finished)

The regular H-1B cap is set at 65,000 and the Advanced Degree cap is set at 20,000.

The regular H-1B cap is very close to being exhausted. At the rate of filings per week, we predict that this cap will be finished within weeks.

Employers who want to file H-1B petitions for eligible, professional workers should do so as soon as possible.

We will provide updates at [www.bashyamspiro.com](http://www.bashyamspiro.com) as they become available.

### **Are 21% of all H-1B Petitions Fraudulent?**

The Government Accountability Office (GAO) recently released a [study](#) it conducted of the H-1B visa program. It concluded that significant reform was needed to reduce the costs and risks associated with the program, and that Congress should examine including this reform in any Comprehensive Immigration Reform package it may pass in the future.

*Here are a few tidbits from the report that we found interesting:*

"Over the decade, over 14 percent of all initial petitions were submitted by cap-exempt employers, and only a few employers (fewer than 1 percent) garnered over one-quarter of all H-1B approvals."

"Department of Labor's review of H-1B applications from employers is cursory and limited by law to only looking for missing information and obvious inaccuracies. Yet a recent Department of Homeland Security study reported that 21 percent of the H-1B petitions they examined involved fraud or technical violations."

"H-1B program lacks a legal provision for holding employers accountable to program requirements when they obtain H-1B workers through a staffing company (see fig. 2). Officials from the Department of Labor's investigative office reported receiving the bulk of their complaints from H-1B workers contracted by staffing companies."

"...over 50 percent of employers requesting H-1B workers between June 2009 and July 2010 categorized their prospective H-1B workers as receiving entry-level wages, although we cannot tell whether this trend reflects lower skill levels or other actors."

You can read the entire GAO report [HERE](#).

### **The Wait Continues - February 2011 Visa Bulletin**

U.S. Department of State released the February 2011 Visa Bulletin. Here's how things have changed since January.

#### *Employment-Based Category Two (EB-2):*

China – advanced 1 month

India – did not advance

#### *Employment-Based Category Three (EB-3):*

All Other Chargeability Areas – advanced 10 days

China – advanced 15 days

India – advanced 21 days

Philippines – advanced 10 days

Mexico – advanced 2 months and 20 days

As you can tell, visa availability hasn't changed much in the last one month. So the wait continues...

*To view the Visa Bulletin, please [click here](#).*

### **Immigration for Spouses and Children: The Visa Roller-Coaster Ride**

In our latest [Immigration-Meditation](#) blog post, Bashyam Spiro Senior Counsel, [Ame Coats](#), tells us why the immigration for spouses and children of U.S. permanent residents has been like a roller-coaster ride recently. Visit our blog to read more and to share your experiences and thoughts on the Permanent Residency process.

### **New Countries Eligible to Participate in H-2A/H-2B Programs**

U.S. Citizenship and Immigration Services (USCIS) announced that the Department of Homeland Security (DHS) has identified 53 countries whose nationals are eligible to participate in the H-2A and H-2B programs for the coming year.

The [H-2A program](#) allows U.S. employers to bring foreign nationals to the United States to fill temporary agricultural jobs; the [H-2B program](#) allows U.S. employers to bring foreign nationals to the United States for temporary nonagricultural jobs. USCIS, with limited exception, approves petitions only for nationals of countries designated by the Secretary of Homeland Security as eligible to participate in the H-2A and H-2B programs. A new list of eligible countries was published in a [Federal Register notice](#) on January 18, 2011, and the designations are valid for one year from the date of publication.

Effective Jan. 18, 2011, nationals from the following countries are eligible to participate in the H-2A and H-2B programs: Argentina, Australia, Barbados, Belize, Brazil, Bulgaria, Canada, Chile, Costa Rica, Croatia, Dominican Republic, Ecuador, El Salvador, Estonia, Ethiopia, Fiji, Guatemala, Honduras, Hungary, Ireland, Israel, Jamaica, Japan, Kiribati, Latvia, Lithuania, Macedonia, Mexico, Moldova, Nauru, The Netherlands, Nicaragua, New Zealand, Norway, Papua New Guinea, Peru, Philippines, Poland, Romania, Samoa, Serbia, Slovakia, Slovenia, Solomon Islands, South Africa, South Korea, Tonga, Turkey, Tuvalu, Ukraine, United Kingdom, Uruguay, and Vanuatu. Of these countries, the following were designated for the first time this year: Barbados, Estonia, Fiji, Hungary, Kiribati, Latvia, Macedonia, Nauru, Papua New Guinea, Samoa, Slovenia, Solomon Islands, Tonga, Tuvalu, and Vanuatu.

This new list does not affect the status of individuals who currently hold valid H-2A or H-2B visas or status.

We will post additional information on [www.bashyamspiro.com](http://www.bashyamspiro.com) as it becomes available.

## **USCIS Postpones I-129 Export Control Certification**

Do you know if your company is subject an Export Control Certification requirement? Most companies didn't!

On December 22, 2010, the United States Citizenship and Immigration Services (USCIS) postponed a requirement that H-1B, L-1A, and O-1A petitioners certify their compliance with export control regulations. This will give employers additional time to determine if they are subject to this requirement. Petitioners will not be required to complete Part 6 of Form I-129 until February 20, 2011.

We will post additional updates at [www.bashyamspiro.com](http://www.bashyamspiro.com) as they become available.

## **HELPFUL LINKS**

### **To [Consult](#) with an Attorney**

You may [contact](#) our Office to schedule a one-time paid consultation with no further obligation. A [scheduled consultation](#) with an attorney at Bashyam Spiro LLP provides you with details and recommendations based on the specific facts of your case. This will help you with making the right decisions based on the legal options and strategies available.

### **Follow Us**

To further explore what is happening in immigration across our nation and the world follow us on [Twitter](#) and [Facebook](#) or take a look at our [Immigration Minute How To Videos, Webinars and Podcasts](#) on subjects like the I-601 Hardship Waiver, K-3 Visa application process, and the Pros and Cons of Fiance & Spouse Sponsorship.

*Have an immigration question?* Visit our [Practice Areas](#) page and tell us what you want to know. Your answers may be featured in our next *Immigration News Update!*

To [read](#) and [hear](#) what our clients and staff say about our firm, please click [here](#).

For the latest on USCIS bulletins and updates, subscribe to our [Immigration News Blog](#).

To access some helpful immigration related web sites, please click [here](#).

To schedule a consultation, please send an email [info@bashyamspiro.com](mailto:info@bashyamspiro.com) or click [here](#).

To learn more about Bashyam Spiro LLP, please visit [our website](#).

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[Law Group](#), a firm committed solely to the practice of [Immigration and Nationality Law](#).  
Bashyam Spiro LLP handles U.S. [immigration cases](#) in all 50 states and around the world.

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