



# Visa Insights

*For Employers, In-House Counsel, HR Managers and Employees:  
Immigration News You Can Use*

*Visas for Work*

*Visas for Life*

September 30, 2008

## [New Green Card Lottery Begins October 2, 2008](#)

From October 2 through December 1, 2008, the U.S. Department of State ("DOS") will be accepting applications for the Diversity Visa Program (Visa Lottery), a program which randomly selects certain qualified aliens for permanent immigration to the United States. The visa lottery was introduced in 1986 as a temporary remedy to increase immigration from countries from which relatively few people had immigrated in previous years; Congress made it permanent in 1995. Applications for the lottery must be submitted electronically (including digital photographs meeting DOS specifications). The entry form is available at [www.dvlottery.state.gov](http://www.dvlottery.state.gov) during the registration period. Paper entries will not be accepted. DOS charges no fee for submitting an entry. The program authorizes a maximum of 55,000 diversity visas for each fiscal year, to be selected at random by computer.

Natives of 176 countries on six continents are eligible for entry in the Diversity Lottery (including 53 countries in Africa, 33 in Asia and the Middle East, 53 in Europe, 22 in South America, 14 in Oceania, and 1 in North America --- the Bahamas). Natives of certain countries which have sent more than 50,000 immigrants to the U.S. over the previous five years do not qualify, and should not apply. Non-qualifying countries include:

- Canada
- mainland China (persons born in Hong Kong, Macau, and Taiwan are eligible),
- Colombia
- Dominican Republic
- Ecuador
- El Salvador
- Guatemala
- Haiti
- India
- Jamaica
- Mexico
- Pakistan

- Philippines
- Peru
- Poland
- Russia
- S. Korea
- United Kingdom (not including N. Ireland) and its dependent territories
- Vietnam

For complete eligibility information, access the Department of State's website at [http://travel.state.gov/visa/immigrants/types/types\\_1322.html](http://travel.state.gov/visa/immigrants/types/types_1322.html).

Applicants must possess the following qualifications:

1. Education or Work Experience: Attainment of a high school education or its equivalent, OR two years of work experience within the past five years in an occupation requiring at least two years of experience (as listed in the Department of Labor's O\*Net OnLine database);
2. Must be a native of a qualifying country, as listed in the DOS Diversity Visa instructions. "Native" usually means the applicant was born in that country, but if an applicant's spouse was born in an eligible country, the applicant may claim that country provided both applicant and spouse are on the selected entry. Also, if the applicant was born in a non-eligible country but neither parent was born or resided there at the time of the applicant's birth, the applicant may claim one of the parent's country of birth if natives of that country are eligible for the program.

Applicant's spouses and children under 21 years of age will be accorded derivative status for immigration to the U.S. if the applicant is selected. Spouses are permitted to submit separate entries to better their chances for selection. However, all entries must include information and photographs for both spouses and their children under 21 years of age, unless a child is already a U.S. citizen or Legal Permanent Resident. Applicants may apply even if they currently live in the United States and have one or more pending immigration petitions. However, applicants will only be able to adjust their status to that of Permanent Legal Residents if they meet the requirements of §245 of the Immigration and Naturalization Act.

Applicants should apply before the last week of November, 2008, as the DOS has warned that the website may react slowly due to high rates of activity.

**WARNING:** There have been instances of fraudulent websites posing as official U.S. Government sites. Some companies posing as the U.S. Government have sought money in order to "complete" lottery entry forms. The DOS does not charge to download, complete and file the Electronic Diversity Visa Entry Form. The DOS notifies successful Diversity Visa applicants by letter, and NOT by email.

## [USCIS Will No Longer Accept Outdated Employment Application Forms](#)

USCIS has reminded applicants for employment authorization documents (“EAD”) that they must use updated versions of the forms (available on USCIS’ website) or their applications will not be accepted. Applicants must use the May 27, 2008 or later version of the I-765, Application for Employment Authorization.

## [State Law Sanctioning Employers Who Knowingly Hire Illegal Immigrants Upheld](#)

On September 17, 2008, a federal appeals court upheld an Arizona law which authorizes the revocation or suspension of business licenses of employers caught hiring illegal immigrants. The appeals court affirmed the trial court’s ruling that federal law allows states to regulate the licensing of businesses that knowingly violate federal immigration laws. However, because the law was challenged by business and Hispanic groups before it was actually enforced, the court reiterated that it will still be possible for an employer to challenge its enforcement in the future. The trial court had interpreted the act as allowing an employer to present evidence in its defense before its license could be revoked under the statutory provisions.

In another ruling, a state court judge in Rhode Island ruled that the governor of that state could require employers who contract with the state government to electronic verify their workers’ immigration status.

## [Three Categories of Religious Worker Green Cards Expire on October 1, 2008](#)

Authorization for non-minister special immigrant religious workers will expire on October 1, 2008. Individuals who have an approved I-360 (Petition for Amerasian, Widow(er), or Special Immigrant) must apply for adjustment of status to legal permanent residence (form I-485) before October 1, as the USCIS has stated it will reject such applications filed on or after that date, as well as I-360 petitions. Unless Congress extends the expiration date, beginning on October 1 the USCIS will hold in abeyance decisions on all pending forms I-360 and forms I-485. The three categories of religious workers which will be ineligible for green cards are: religious professionals, workers in religious vocations and workers in religious occupations.

**ALERT:** On Monday, September 29<sup>th</sup>, Congress passed and sent to the President an extension of the religious worker law. Once signed, these three categories of religious worker green cards will be extended, but only until March 6, 2009. Given the short duration of this extension, and the uncertainty of how the new President and new

Congress will view a further extension, non-profit employers of all categories of religious workers should make immediate plans to expedite these filings for all eligible employees.

### **Did You Know?**

Since the new Permanent Labor Certification Program (“PERM”) was instituted by the Department of Labor in March of 2005, over 271,211 applications have been submitted electronically. Through May, 2008, approximately 77% of these applications were approved, 21% were denied, and 2% were withdrawn.

PERM is an electronic system which requires U.S. employers to prove there are no minimally qualified U.S. workers to fill a position before filling the position with an alien worker. If no U.S. worker is available through PERM, the employer can petition for legal permanent residence status for that worker.

**Lataif & Associates is a full service immigration boutique law firm. For further information, please contact Lataif & Associates, P.A. via email at [Info@Lataif.com](mailto:Info@Lataif.com) or by phone at (954) 776-5777.**

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