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## VEPACHEDU EDUCATIONAL FOUNDATION

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### IMMIGRATION (Part II)

(Continued from Part I)

*Immigration is emerging as a pivotal issue-like race, taxes and crime—that defines political conflict over the basic values of our society. It is an issue that evokes cultural and economic anxieties; concerns about the preservation of natural and public resources even the fears of personal safety. After years of comparative obscurity, pressures are mounting again for immigration policy reform. As public debate intensifies, it is characterized increasingly by disagreement over facts as well as policy<sup>(2)</sup>.*

*"The unauthorized resident immigrant population is defined as all foreign-born non-citizens who are not legal residents. Most unauthorized residents either entered the United States without inspection or were admitted temporarily and stayed past the date they were required to leave. . .<sup>(3)</sup>"*

#### THE GRACE PERIOD, THE MYTH

Immigration grace period is a continuation of valid nonimmigrant status. Most often, the grace period refer to the continuation of F-1 or J-1 status after the completion of the program. Individuals with a proper grace period are considered to be in a lawful nonimmigrant status.

The 60-day departure preparation is the grace period<sup>(4)</sup> for valid F-1 status which may be granted upon the completion of the program of study or post-completion practical training. J-1 exchange visitor generally has 30 days of grace period - a 30-day travel period<sup>(5)</sup> following the completion of the program. During this grace period, they may change status, transfer to a different program, or prepare for departure from the United States.

However, most other nonimmigrant categories do not have such grace periods, e.g., H1B holders. In general, there is no grace period after denial of requests to change, extend, or adjust status. In most situations, a nonimmigrant worker with H1B visa who is terminated or laid off typically falls out of status immediately following the last day of work. There is no automatic 10-day or other grace period for terminated employees holding H-1B status, so once the individual is no longer in a lawful nonimmigrant status, i.e., becomes the so-called "*illegal immigrant*,"

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usually must depart from the United States<sup>(6)</sup>. Similar to H-1B nonimmigrants, E, L, O and P nonimmigrants are no longer considered to be maintaining valid status as of the day their petitioned for employment has been terminated. The law and regulations do not provide a grace period for E, L, O, and P nonimmigrants whose employment has been terminated, so once the individual is no longer in a lawful nonimmigrant status, he/she usually must depart from the United States.

Filing an appeal or a motion to reconsider neither grants any lawful status, nor stops the accrual of unlawful presence. The consequences of the denial are unchanged, unless the motion or appeal is successful in overturning the denial. The harshness of consequences for failure to maintain status is blind to ignorance, misconception or misunderstanding of very complex immigration law by the aliens.

		<b>2010</b>
<b>1) Foreign-born population</b>		
a. Foreign-born population, entered 1980–2009, 2009 ACS .....		29,800,000
b. Adjustment for shift in reference date from July 1, 2009 to January 1, 2010 .....		410,000
c. Undercount of nonimmigrants in ACS .....		180,000
d. Undercount of other legally resident immigrants (LPRs, recent refugee/asylee arrivals) in ACS .....		480,000
e. Undercount of unauthorized immigrant population in ACS .....		1,080,000
f. Estimated foreign-born population, January 1, 2010 (a.+b.+c.+d.+e.) .....		31,950,000
<b>2) Legally resident population</b>		
g. LPR, refugee, and asylee flow January 1, 1980–December 31, 2009 .....		24,620,000
h. Mortality 1980–2009 .....		1,670,000
i. Emigration 1980–2009 .....		3,590,000
j. LPR, refugee, and asylee resident population, January 1, 2010 (g.–h.–i.) .....		19,360,000
k. Nonimmigrant population on January 1, 2010 .....		1,800,000
l. Estimated legally resident population, January 1, 2010 (j.+k.) .....		21,160,000
<b>3) Unauthorized immigrant population</b>		
m. Estimated resident unauthorized immigrant population, January 1, 2010 (f.–l.) .....		10,790,000

Detail may not sum to totals because of rounding.  
Source: U.S. Department of Homeland Security.

Nearly half of the 12 million-plus illegal aliens in America arrived legally with temporary, non-immigrant visas. The Department of Homeland Security (DHS) estimates that a 'substantial'

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percentage of America's illegal population is made up of visa overstays — their estimates range from 27 to 57 percent. . .<sup>(7)</sup>

In the U.S. labor force, there were 8.1 million unauthorized immigrants<sup>(8)</sup>.

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**State of Residence of the Unauthorized Immigrant Population: January 2000 and 2005-2010**

State of residence	Estimated population in January						
	2000	2005	2006*	2007	2008	2009	2010
All states .....	8,460,000	10,490,000	11,310,000	11,780,000	11,600,000	10,750,000	10,790,000
California.....	2,510,000	2,770,000	2,790,000	2,840,000	2,850,000	2,600,000	2,570,000
Texas .....	1,090,000	1,360,000	1,620,000	1,710,000	1,680,000	1,680,000	1,770,000
Florida.....	800,000	850,000	960,000	960,000	840,000	720,000	760,000
Illinois .....	440,000	520,000	530,000	560,000	550,000	540,000	490,000
Arizona .....	330,000	480,000	490,000	530,000	560,000	460,000	470,000
Georgia.....	220,000	470,000	490,000	490,000	460,000	480,000	460,000
New York.....	540,000	560,000	510,000	640,000	640,000	550,000	460,000
North Carolina .....	260,000	360,000	360,000	380,000	380,000	370,000	390,000
New Jersey .....	350,000	380,000	420,000	470,000	400,000	360,000	370,000
Nevada .....	170,000	240,000	230,000	260,000	280,000	260,000	260,000
Other states .....	1,760,000	2,510,000	2,900,000	2,950,000	2,950,000	2,730,000	2,790,000

Detail may not sum to totals because of rounding.

\*Revised as noted in the 1/1/2007 unauthorized estimates report published in September 2008.

Source: U.S. Department of Homeland Security.

Therefore, in 2013, Facebook CEO Mark Zuckerberg joined the club and is fighting for immigration reform by campaigning for more flexible immigration laws. An advocacy group founded by Mark Zuckerberg to push for more flexible immigration laws, FWD.us<sup>(9)</sup>, is launching a campaign with the hope of bringing forth reform in 2017, costing about \$ 10 m. This is part of about \$45 billion for philanthropic works promised by Zuckerberg and wife. FWD.us includes Bill Gates, Eric Schmidt, and Reid Hoffman, who have advocated for immigration reform that would expand visa eligibility for highly skilled immigrants who want to live and work in the United States and allow a pathway to legal citizenship for undocumented immigrants.

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Define American has asked all candidates to recognize that words matter by committing to not using the term "illegal" when referencing our country's 11.7 million undocumented immigrants<sup>(10)</sup>. Undocumented immigrants serve in the military, with the U.S. naturalizing 107,398 members of the military in just the past 15 years, and 2.5 million farm workers are undocumented, who help put food on our tables. Therefore, a majority of Americans (68%) favor a legal pathway for undocumented immigrants<sup>(11)</sup>.

Immigration is the quintessential supply-side policy<sup>(12)</sup>. It expands the labor force, encourages investment and provides taxpayers to support America's growing ranks of the grey-haired. Therefore, despite all the anti-immigrant rhetoric, the United States welcomes thousands of foreign workers in multiple occupations or employment categories every year. These include artists, researchers, cultural exchange participants, information technology specialists, religious workers, investors, scientists, athletes, nurses, agricultural workers and others. Legal immigration has been around 1m a year for the past decade (see chart). However, undocumented population came to a halt in 2007<sup>(13)</sup>.

In order to modernize and improve certain aspects of employment-based nonimmigrant and immigrant visa programs, The Department of Homeland Security (DHS) has proposed to amend current regulations to provide stability and job flexibility for the beneficiaries of approved employment-based immigrant visa petitions while they wait to become lawful permanent residents, and to better enable U.S. employers to hire and retain certain foreign workers who are beneficiaries of approved employment-based immigrant visa petitions and are waiting to become lawful permanent residents (LPRs). Further, DHS proposes to conform its regulations with the American Competitiveness in the Twenty-First Century Act of 2000 (AC21) as amended by the Twenty-First Century Department of Justice Appropriations Authorization Act (the 21st Century DOJ Appropriations Act), as well as the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA). The rule also seeks to clarify several interpretive questions raised by ACWIA and AC21 regarding H-1B petitions, and incorporate relevant AC21 policy memoranda and an Administrative Appeals Office precedent decision, and would ensure that DHS practice is consistent with them. Notice of proposed rulemaking is published in the Federal Register on December 31, 2015<sup>(14)</sup>.

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The proposed amendments<sup>(14)</sup> are intended to: clarify and improve longstanding agency policies and procedures implementing sections of the American Competitiveness in the Twenty-First Century Act (AC21) and the American Competitiveness and Workforce Improvement Act (ACWIA) related to certain foreign workers, which will enhance USCIS' consistency in adjudication; better enable U.S. employers to employ and retain certain foreign workers who are beneficiaries of approved employment based immigrant visa petitions (I-140 petitions) while also providing stability and job flexibility to these workers; clarify when individuals may keep their priority date to use when applying for adjustment of status to lawful permanent residence, including when USCIS has revoked the approval of their approved I-140 petitions because the employer withdrew the petition or because the employer's business shut down; allow certain high-skilled individuals in the United States in E-3, H-1B, H-1B1, L-1, or O-1 nonimmigrant status to apply for one year of unrestricted employment authorization if they: are the beneficiaries of an approved I-140 petition, remain unable to adjust status due to visa unavailability, and can demonstrate that compelling circumstances exist which justify issuing an employment authorization document; clarify various policies and procedures related to the adjudication of H-1B petitions, including, among other things, extensions of status, determining cap exemptions and counting workers under the H-1B visa cap, H-1B portability, licensure requirements, and protections for whistleblowers; and establish a one-time grace period during an authorized validity period of up to 60 days for certain high-skilled nonimmigrant workers whenever their employment ends so that they may more readily pursue new employment and an extension of their nonimmigrant status.

The public has until February 29, 2016 to comment<sup>(15)</sup>. All submissions must include the agency name and DHS Docket No. USCIS-2015-0008. All submissions will be posted to the Federal eRulemaking Portal and will include any personal information provided in the voluntary public comment submission<sup>(16)</sup>. However, DHS may withhold information provided in comments from public viewing if DHS determines that such information is offensive or may impact the privacy of an individual.

### REFERENCES AND NOTES

<sup>(14)</sup> Dr. Rao Vepachedu is the Managing Director at Cardinal Risk Management and registered patent attorney with extensive experience in the management of intellectual property and extensive experience in research and teaching. He currently works for Cardinal Intellectual Property

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(CIP), Cardinal Risk Management (CRM), and Cardinal Law Group (CLG). In addition, he is the president of Vepachedu Educational Foundation Inc. ([www.vepachedu.org](http://www.vepachedu.org)), a 501(c) (3) educational foundation. For more information visit: [www.linkedin.com/in/vepachedu](http://www.linkedin.com/in/vepachedu); <http://www.avvo.com/attorneys/60201-il-sreenivasarao-vepachedu-764535.html>, and <http://www.crm-ip.com/vepachedu.html>. Contact: svepachedu@yahoo.com or rao.vepachedu@cardinal-ip.com: [www.linkedin.com/in/vepachedu](http://www.linkedin.com/in/vepachedu) and <http://www.crm-ip.com/vepachedu.html>;



<http://www.avvo.com/profile/dashboard>.

<sup>(2)</sup> Vepachedu (1996), THE IMMIGRATION AND NATURALIZATION SERVICE A REVIEW PRESENTATION OF AN AGENCY (Administrative Law): <http://www.vepachedu.org/INS-Review-1996.pdf>

<sup>(3)</sup> Illegal Immigration: <http://cis.org/Illegal>

Unauthorized immigrant population stable for half a decade: <http://www.pewresearch.org/fact-tank/2015/07/22/unauthorized-immigrant-population-stable-for-half-a-decade/>

Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2010:

[http://www.dhs.gov/xlibrary/assets/statistics/publications/ois\\_ill\\_pe\\_2010.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2010.pdf)

<http://www.dhs.gov/publication/estimates-unauthorized-immigrant-population-residing-united-states-january-2011>

[http://www.dhs.gov/sites/default/files/publications/ois\\_ill\\_pe\\_2011\\_0.pdf](http://www.dhs.gov/sites/default/files/publications/ois_ill_pe_2011_0.pdf)

7 charts that explain the undocumented immigrant population: <https://www.washingtonpost.com/news/the-fix/wp/2014/11/21/7-charts-that-explain-the-undocumented-immigrant-population/>

<sup>(4)</sup> Extension of Post Completion Optional Practical Training (OPT) and F-1 Status for Eligible Students under the H-1B Cap-Gap Regulations: <http://www.uscis.gov/working-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/extension-post-completion-opt-and-f-1-status-eligible-students-under-h-1b-cap-gap-regulations>

<sup>(5)</sup> J-1 Visa: <http://j1visa.state.gov/participants/current/adjustments-and-extensions/>

<http://j1visa.state.gov/participants/common-questions/>

<sup>(6)</sup> Practical Immigration Consequences for Foreign Workers in a Slowing Economy: <http://www.uscis.gov/tools/ombudsman-liaison/practical-immigration-consequences-foreign-workers-slowing-economy>

<sup>(7)</sup> No Coyote Needed U.S. Visas Still an Easy Ticket in Developing Countries, Backgrounder March 2008:

<http://www.cis.org/sites/cis.org/files/articles/2008/back208.pdf>

<sup>(8)</sup> 5 facts about illegal immigration in the U.S.: <http://www.pewresearch.org/fact-tank/2015/11/19/5-facts-about-illegal-immigration-in-the-u-s/>

<sup>(9)</sup> Fight for policies that grow a 21st century economy: <http://www.fwd.us/>

<http://www.aila.org/adovo-media/press-releases/2015/aila-commends-congress-omnibus-appropriations-bill>

<sup>(10)</sup> #WORDSMATTER: PRESIDENTIAL CANDIDATE PLEDGE: <http://act.defineamerican.com/page/#wordsmatter>

<sup>(11)</sup> Fact Sheet: Undocumented Immigrants in the United States: [http://b.3cdn.net/defineamerica/50104ff5fd5cbdbaf\\_vwm6b970f.pdf](http://b.3cdn.net/defineamerica/50104ff5fd5cbdbaf_vwm6b970f.pdf)

<sup>(12)</sup> Supply side policy includes any policy that improves an economy's productive potential and its ability to produce. Measures to improve labor mobility will also have a positive effect on labour productivity, and on supply-side performance.

This improves labor market flexibility.

Supply-side policy: [http://www.economicsonline.co.uk/Global\\_economics/Supply-side\\_policies.html](http://www.economicsonline.co.uk/Global_economics/Supply-side_policies.html)

Supply Side Policies: <http://www.economicshelp.org/macroeconomics/economic-growth/supply-side-policies/>

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<sup>(14)</sup> Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers, Federal Register Volume 80, Number 251 (Thursday, December 31, 2015): <https://www.gpo.gov/fdsys/pkg/FR-2015-12-31/html/2015-32666.htm>

<sup>(15)</sup> USCIS Seeks Comments on Proposed Rule Affecting Certain Employment-Based Immigrant and Nonimmigrant Visa Programs: <http://www.uscis.gov/news/uscis-seeks-comments-proposed-rule-affecting-certain-employment-based-immigrant-and-nonimmigrant-visa-programs>

<sup>(16)</sup> [regulations.gov](http://www.regulations.gov), Your Voice in Federal Decision Making: <http://www.regulations.gov/#!home>

Comment Now: <http://www.regulations.gov/#!submitComment:D=USCIS-2015-0008-0001>

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*Om! Asatoma Satgamaya, Tamasoma Jyotirgamaya, Mrityorma Amritamgamaya, Om Shantih, Shantih, Shantih! (Aum! Lead the world from wrong path to the right path, from ignorance to knowledge, from mortality to immortality, and peace!)*

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