The Visa Efficiency and E-Verify Extension Act of 2008: Section by Section

Short Summary: This bill recaptures unused or unclaimed employment-based visas and family-sponsored visas from fiscal years 1992 through 2007 and allows unused family and employment-based visas in future years to automatically "roll over" to the next fiscal year. Although the maximum number of family and employment-based visas is set by law, the actual number of visas issued in a given fiscal year can be significantly lower based on processing or other bureaucratic delays. In order to ensure that all authorized visas are actually used, the Visa Efficiency and E-Verify Extension Act of 2008 permits a calculation of the final number of visas available that takes into account unused visas from past years. The precise calculation is set forth in the section by section below.

The bill extends the Conrad State 30 program for 5 years to June 1, 2013. The bill also extends the special immigrant non-minister religious worker program to October 1, 2011.

This bill reauthorizes the Department of Homeland Security's (DHS) Basic Pilot electronic employment eligibility verification program, also known as "E-Verify." This legislation provides for a 5-year extension of this voluntary program for the electronic employment verification of employees. It also includes provisions that ensure DHS provides timely reimbursements to the Social Security Administration (SSA) for E-Verify's use of SSA resources. It also authorizes two Government Accountability Office studies on the causes of erroneous tentative nonconfirmations and the impact of the E-Verify program on small businesses.

Section 1. Short Title.

This section establishes the act's title as the "Visa Efficiency and E-Verify Extension Act of 2008."

Section 2. Recapture of Immigrant Visas Lost to Bureaucratic Delay.

This section recaptures unused or unclaimed employment-based visas and family-sponsored visas from fiscal years 1992 through 2007. For future fiscal years, the number of unused family and employment-based visas will automatically "roll over" to the next fiscal year.

(a) Worldwide Level of Employment-Based Immigrants. The worldwide level of employment-based immigrants for each fiscal year is 1) 140,000 (the same base number of employment immigrant visas available under current law), plus 2) the number of unused visa numbers from the previous fiscal year, and 3) the number of unused visas from 1992 to the previous fiscal year.

The number of unused employment visa numbers from the previous fiscal year is computed by determining the difference between 1) the worldwide level of employment-based visas established for the previous fiscal year and 2) the number of employment-based visas actually issued during the previous fiscal year.

The number of unused employment-based visa numbers from fiscal years 1992 through 2007 is computed by determining the difference, if any, between 1) the number of employment-based visas that were available for recapture from 1992 to 2007 (computed as the difference between the worldwide level of employment-based visas from 1992 to 2007 and the number of employment-based visas actually issued during those years) and 2) the number of recaptured employment-based visas from 1992-2007 that have already been issued.

(b) Worldwide Level of Family-Sponsored Immigrants. The worldwide level of family-sponsored immigrants under this subsection for a fiscal year is equal to 1) 480,000 (the same base amount of family immigrant visas that are available under current law), minus 2) the number of visas issued to individuals who are not currently subject to numerical limitations, plus 3) the number of unused visas from 1992 to the previous fiscal year. As under current law, the number of individuals computed under subparagraph (A)(i) (which is equal to 480,000 minus the number of visas for individuals not subject to direct numerical limitations) may not be less than 226,000.

As under current law, the number of aliens not subject to direct numerical limitations includes immediate relatives who have been issued immigrant visas and aliens born to an alien lawfully admitted for permanent residence during a temporary visit abroad.

The number of unused family visas from the previous fiscal year is determined by computing the difference, if any, between 1) the worldwide level of family-based visas established for the previous fiscal year, and 2) the number of family-based visas actually issued during the previous fiscal year.

The number of unused family-sponsored visa numbers from fiscal years 1992 through 2007 is computed by determining the difference, if any, between 1) the number of family-based visas that were available for recapture from 1992 to 2007 (computed as the difference between the worldwide level of family-based visas from 1992 to 2007 and the number of family-based visas actually issued during those years), and 2) the number of recaptured family-based visas from 1992-2007 that have already been issued.

Effective Date. This act will be effective 60 days after date of enactment.

Sec. 3. Extension of Conrad State 30 Program.

Extends the Conrad State 30 program to June 1, 2013. The Conrad State 30 program was designed to provide each of the fifty U.S. states with 30 waivers for J-1 physicians each fiscal year. Under the program, a state department of health or other entity designated by a governor identifies a physician willing to serve in an area of need. The state agency files a petition on behalf of the doctor with the U.S. Department of State Visa Waiver Office and the U.S. State Department then makes a recommendation to U.S. Citizenship and Immigration Services (USCIS).

Sec. 4. Special Immigrant Nonminister Religious Worker Program.

By December 31, 2008, DHS shall issue final regulations to eliminate or reduce fraud related to the granting of special immigrant status for individuals working in a religious vocation or occupation. Extends the special immigrant nonminister religious worker program to October 1, 2011. By September 30, 2010, the DHS Inspector General shall submit on the effectiveness of the regulations to reduce fraud.

Sec. 5. Extension of the Basic Pilot Program ("E-Verify").

Reauthorizes the Basic Pilot electronic employment eligibility verification program also known as "E-Verify" as a voluntary pilot program for an additional 5 years – through 2013.

Sec. 6. Protection of Social Security Administration Programs.

This legislation requires DHS to provide timely and appropriate payments to the Social Security Administration so that E-verify does not interfere with the Social Security Administration's ability to serve seniors, people with disabilities, and survivors. E-Verify relies on the Social Security Administration's (SSA's) data and systems to verify the citizenship and Social Security numbers of all newly-hired individuals for their eligibility to work. DHS is responsible for funding SSA's costs related to E-Verify and in prior years, DHS's reimbursements to SSA have been either delayed or not forthcoming at all.

For years beginning on October 1, 2008, DHS and SSA shall enter into and maintain an agreement which shall provide funds to SSA for the full costs of responsibilities for its role in operating the Basic Pilot program including but not limited to acquiring, installing and maintaining technological systems; and responding to individuals who contest tentative nonconfirmations. The funds shall be provided quarterly in advance of the applicable quarter through methodology agreed to by SSA and DHS. The bill requires an annual accounting and reconciliation of the actual costs incurred and the funds provided under the agreement.

In any fiscal year in which the agreement described above has not been reached by October 1, the latest agreement between DHS and SSA shall be deemed to be in effect on an interim basis until such time as an agreement described above is reached except that the terms of the interim agreement shall be adjusted for inflation and any increase or decrease in the volume of requests under the Basic Pilot. SSA and DHS shall notify select Congressional Committees of any failure to reach a funding agreement. Until such time as the agreement has been reached, SSA and DHS shall not later than 90 days after October 1 of such fiscal year, notify such Committees of the status of negotiations between the Commissioner and the Secretary.

Sec. 7. Government Accountability Office (GAO) Study of Basic Pilot Confirmation System.

Requires the GAO to report to Congress on the causes of erroneous tentative nonconfirmations, how they are remedied and the effect they have on individuals, employers and federal agencies. Not later than two years after the date of enactment of this Act, the Comptroller General shall submit the results of the study to select Congressional Committees.

Sec. 8. GAO Study of Effects of Basic Pilot Program on Small Entities.

Requires the GAO to examine the experiences of small businesses, non-profits and municipalities with using Basic Pilot by investigating direct and indirect impacts on basic pilot participants. It will also provide specific data on businesses with fewer than 50 employees as well as on small entities operating in states that have mandated use of the basic pilot program.