

## SISKIND'S IMMIGRATION BULLETIN

21 July 2000

E-mail subscribers as of July 14, 2000 - 26,576 persons (50 states/144 countries).

Published by Greg Siskind, partner at the Immigration Law Offices of Siskind, Susser, Haas & Devine, Attorneys at Law; telephone: 800-748-3819, 901-737-3194 or 615-345-0225; facsimile: 800-684-1267, email: [gsiskind@visalaw.com](mailto:gsiskind@visalaw.com), WWW home page: <http://www.visalaw.com>. SSHD serves immigration clients throughout the world from its offices in the US, Canada and the People's Republic of China. To schedule a telephone or in-person consultation with the firm, go to <http://www.visalaw.com/intake.html>. Writers: Amy Ballentine and Greg Siskind.

To receive a free e-mail subscription to Siskind's Immigration Bulletin, fill out the form at <http://www.visalaw.com/subscribe2.html>. To unsubscribe, send your request to [visalaw-unsubscribe@topica.com](mailto:visalaw-unsubscribe@topica.com). To subscribe to the free Siskind's Immigration Professional Newsletter, go to <http://www.visalaw.com/sip-intro.html>.

### ***DOWNLOAD THE ENTIRE NEWSLETTER IN PDF FORMAT***

1. A MESSAGE FROM SISKIND, SUSSER, HAAS AND DEVINE
2. LEGISLATIVE UPDATE
3. INS ANNOUNCES NEW PLAN TO IMPROVE PROCESSING OF NATURALIZATION AND ADJUSTMENT OF STATUS APPLICATIONS
4. PROPOSED RULE WOULD RESTORE RELIEF TO MANY IN DEPORTATION PROCEEDINGS
5. NEW REPORTS STUDY IMPACT OF IMMIGRATION ON HEALTH INSURANCE RATES
6. COMMENTARY – ADVOCACY EFFORTS NEEDED AS LEGISLATIVE SESSION WINDS DOWN
7. STATE DEPARTMENT VISA BULLETIN – AUGUST 2000
8. BORDER NEWS
9. NEWS FROM THE COURTS
10. GOVERNMENT PROCESSING TIMES
11. NEWS BYTES
12. THE ABC'S OF IMMIGRATION – FAMILY BASED IMMIGRATION OVERVIEW
13. CRITICISM CONTINUES TO DOG INS OFFICIALS AT PORTLAND AIRPORT
14. JUDGE INDEFINITELY DELAYS DEPORTATION OF THAI TODDLER

- 15. INVESTIGATION INTO BEATING OF MIGRANTS EXPANDS
  - 16. BASEBALL PLAYER DEFECTS AS JUSTICE DEPARTMENT INVESTIGATES TEAM FOR IMMIGRATION LAW VIOLATIONS
  - 17. INS PUBLISHES RULE MOVING AUTHORITY FOR FARMWORKER PROGRAM TO DEPARTMENT OF LABOR
  - 18. REGULATIONS ON FAMILY UNITY PROGRAM ISSUED
  - 19. INS ARRESTS TWO IN UNAUTHORIZED WORKER EMPLOYMENT SCHEME
  - 20. BORDER PATROL AGENTS GO INTO MEXICO IN PURSUIT OF MIGRANTS
- 

## 1. A MESSAGE FROM SISKIND, SUSSER, HAAS AND DEVINE

Dear Readers:

Again this week, we report to you that there has been no real progress on the legislative front in Congress on issues like raising the H-1B cap, restoring Section 245i of the Immigration Act, updating the registry, etc. There are less than 30 days to go in the legislative session and action is needed if a difference is to be made. We are urging readers to contact their Congressional representatives to make their voices heard. To learn more about the issues and what you can do, we recommend visiting the web site of the American Immigration Lawyers Association at <http://www.visalaw.com/>.

But there has been some progress in reversing the 1996 Immigration Act through unilateral actions taken by the INS. In particular, the INS abandoned its position that anyone in deportation proceedings when the harsh 1996 immigration laws went into effect was to be covered by the new law and could not benefit from the pre-1996 laws. The INS was challenged on this issue in courts across the country. Most of the federal circuits overruled the INS on this issue and the INS now is backing down. This week, it proposed regulations to allow people in deportation proceedings when the 1996 law went into effect to be covered by pre-1996 laws.

The INS also suffered another defeat this week. In 1990, it was given exclusive jurisdiction to handle naturalization applications. The INS took that to mean that it also had the right to handle de-naturalization cases. The Ninth Circuit Court of Appeals ruled this week that the INS does NOT have the power to de-naturalize. Only the courts can.

We also have our regular features this week including new State Department visa cutoff dates, the first in our ABCs of Immigration articles on family immigration, government processing times, Border News, News from the Courts and more.

In firm news, I will be in Silicon Valley this week handling the opening of our new San Jose office. If you are in this area and need an in person appointment, please contact us at [california@visalaw.com](mailto:california@visalaw.com) or complete our online questionnaire form at <http://www.visalaw.com/intake.html>. Stay tuned for more details on our latest expansion.

And finally, as always, we remind readers that a law firm that represents clients throughout North America publishes this newsletter. If you are interested in scheduling a telephone consultation to discuss immigration questions you may have or to discuss the possibility of Siskind, Susser, Haas & Devine handling your immigration case, please go to <http://www.visalaw.com/intake.html>. In most cases, we are able to schedule a consultation within two days and we can often accommodate evening and weekend appointments.

Thanks again for you continued loyalty,

Greg Siskind

---

## 2. LEGISLATIVE UPDATE

S. 2812, introduced by Sen. Hatch (R-UT), would provide for a waiver of the oath required for naturalization in cases of applicants with disabilities who are not able to understand the meaning of the oath. If enacted, the waiver would be available regardless of when the naturalization application was filed, either before or after the law is enacted.

\*\*\*\*\*

S. 2852, introduced by Sen. Schumer (D-NY), would provide for the adjustment of status of Syrian Jewish refugees in the US.

\*\*\*\*\*

H.R. 4838, introduced by Rep. Ros-Lehtinen, mirrors S. 2812, discussed above.

---

## 3. INS ANNOUNCES NEW PLAN TO IMPROVE PROCESSING OF NATURALIZATION AND ADJUSTMENT OF STATUS APPLICATIONS

In early May the Chief of the INS immigration Services Division issued a memo to all INS officers in charge of adjudications. This letter, which has just become public, outlines the INS's plans to improve processing of both

naturalization and adjustment of status applications. The memo notes that while improvements in processing times have been made, the INS still faces criticism from many groups who say that processing still takes entirely too long.

New initiatives have been announced for naturalization cases. The first is to insure that all naturalization applicants who filed before July 1, 1998 are scheduled for interviews before the end of fiscal year 2000 (September 30, 2000). The second is to ensure that a decision is made in each naturalization case within 120 days of the initial interview.

Along with new efforts to decide naturalization cases within the statutorily required 120-day period, efforts will be made to decide adjustment of status cases within 120 days of an interview.

---

#### **4. PROPOSED RULE WOULD RESTORE RELIEF TO MANY IN DEPORTATION PROCEEDINGS**

This week the INS published a proposed rule that would address one of the most hotly contested problems created by the 1996 immigration reform laws. Before April 24, 1996, permanent residents in deportation proceedings could request a waiver of deportation, known as a section 212(c) hardship waiver after its section in the Immigration and Nationality Act. On that date, the Antiterrorism and Effective Death Penalty Act became effective. One provision of the AEDPA, section 440(d), eliminated this waiver for many permanent residents convicted of a range of criminal offenses.

Shortly thereafter, the Attorney General released an opinion, *Matter of Soriano*, in which she held that section 440(d) applied to all aliens in deportation proceedings, regardless of when their criminal conduct occurred, or when they had sought the waiver.

This position has been widely rejected by federal courts. Eleven of the twelve courts of appeal have heard cases dealing with the issue, and most of these have disagreed with the Attorney General. While there is little uniformity among the decisions, most courts agree that section 440(d) cannot be applied to aliens in who were in deportation proceedings before the AEDPA became effective.

Because the INS is bound by the decisions of federal courts, and because the decisions of a federal court are binding only in the area in which it has jurisdiction, there is no uniformity in the treatment of this issue. In an effort to provide uniformity, this rule has been proposed. Under the proposed rule, the INS would take the position that section 440(d) will not

be applied to aliens who were in deportation proceedings before it became effective.

The proposed rule also includes a mechanism by which aliens who were denied a 212(c) waiver because of the INS's position can reopen their case. To be eligible to apply for reopening under the proposed rule, the alien must meet the following requirements:

- have been placed in deportation proceedings before April 24, 1996,
- be subject to a final order of deportation,
- be eligible for section 212(c) relief, and,
- have applied for and been denied a waiver because of the Soriano decision, or
- did not apply for a waiver because of the Soriano decision

The rule will not allow those whose requests for a section 212(c) waiver which was denied on the merits to reopen their case. Also, it would not allow aliens who were deported and are either outside the US or have returned illegally to reopen.

This proposed rule, while not addressing all of the concerns of immigration advocates, represents a significant change in the INS's position.

Comments on the proposal will be accepted until August 17, 2000. The should be sent to Charles Adkins-Branch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, VA 22041. The text of the proposed rule is available online at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2000\\_register&docid=00-18210-filed.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2000_register&docid=00-18210-filed.pdf)

---

## 5. NEW REPORTS STUDY IMPACT OF IMMIGRATION ON HEALTH INSURANCE RATES

The Center for Immigration Studies, a non-partisan research organization focused on studying the impact of immigration to the US, this week released a new study, focused on the impact of immigrants, legal and undocumented, on health insurance coverage rates.

According to the report, current immigration policy is in large part responsible for the current health insurance situation. Among the most striking of the report's findings is that in 1998, 32.4% of people living in immigrant households, including US citizen children, were not covered by health insurance. In households headed by a citizen, only 13.9% of people lack insurance. Newly arrived immigrants have accounted for 59% of the increase in the uninsured population since 1993.

The report also indicates that even long-term immigrants, those who have been here since the 1970s and 1980s are insured at a lower rate than the rest of the population. Even in immigrant households with high incomes, above \$75,000 a year, the insurance rate is lower than in the general population.

Critics of the study say that it has missed much of the larger picture. While it does note that many of the lower skill positions occupied by immigrants do not offer health insurance, it ignores the fact that many highly skilled immigrants work for companies that do not offer insurance.

The other study released this week focused on whether undocumented immigrants are drawn to the US by the lure of public health benefits. The answer given by the report, contrary to popular opinion, is that public health benefits have little, if any, impact on a person's decision to come to the US. The authors of the report conclude that because what drives undocumented immigration is the desire to be reunified with family and to seek a better job, cutting access to healthcare would only deny care to their children, who are often US citizens. Moreover, according to the study undocumented immigrants tend to make less use of public health services than other groups in the population, raising doubts about the burden they place on taxpayers.

The Center for Immigration Studies report is available at their website at [www.cis.org](http://www.cis.org). The other study was published in the journal Health Affairs, and is also available online at [www.projhope.org/HA](http://www.projhope.org/HA).

---

## **6. COMMENTARY – ADVOCACY EFFORTS NEEDED AS LEGISLATIVE SESSION WINDS DOWN**

With less than one month remaining before Congress takes its summer recess it seems increasingly doubtful that important legislation, not only that related to immigration, will be passed. However, because Congress must pass appropriations bills, there is still hope that some meaningful legislation will be passed as additions to the funding bills.

Of course, the need for H-1B legislation is high on many lists, but equally important are the efforts to reverse some of the more draconian measures of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act. That law dramatically expanded the grounds for deportation, eliminated most of the discretion of Immigration Judges, and provided for the mandatory detention of many immigrants in deportation proceedings, among many other changes. After almost four years, and hundreds of stories about long-time permanent residents being deported for minor

crimes committed years ago, the battle to change IIRAIRA is now in full swing.

Both the American Bar Association and the American Immigration Lawyers Association are urging its members and the public as a whole to encourage congressmen to encourage change. Some of the most pressing concerns, for which bills are already pending before Congress, are:

- the restoration of section 245(i) (making it possible for immigrant-eligible applicants with status violations to pursue a green card in the US),
- updating the registry date (this basically would create a new amnesty for long-term residents of the US), and
- providing parity for nationals of all countries covered by the Nicaraguan Adjustment and Central American Relief Act.

Members of Congress need to know that their constituents care about these bills.

There are also more changes in immigration law that need to be made, but the lateness in the legislative session means that we will have to be patient. One such change would be a restriction in the definition of the term aggravated felony. As the law currently stands, almost any offense punishable by a year in prison is an aggravated felony, regardless of how the criminal law classifies the offense. Indeed, so many people have faced deportation for minor, petty offenses that are now considered aggravated felonies, that it is beginning to make an impact on how state criminal justice systems pursue convictions.

One example of this is found in a recent letter from the Georgia State Board of Pardons and Paroles to Sen. Max Cleland (D-GA). Until recently, the Board had never pardoned someone who had been convicted of a misdemeanor, because under Georgia law, a misdemeanor conviction does not impair a person's civil or political rights. However, with the introduction of the aggravated felony provisions of the IIRAIRA, many misdemeanors are considered aggravated felonies for immigration purposes. Therefore, the state has begun pardoning some people convicted of misdemeanors to ensure that they will not face a deportation the state considers unfair.

It is vitally important that each member of Congress knows that their constituents are tired of this experiment with America's immigration laws and want a return to a fair system that is consistent with the principles of justice.

---

## 7. STATE DEPARTMENT VISA BULLETIN – AUGUST 2000

# STATE DEPARTMENT VISA BULLETIN – AUGUST 2000

## FAMILY NUMBERS

Family	All Chargeability Areas Except Those Listed	China	India	Mexico	Philippines
1 <sup>st</sup>	01JAN99	01JAN99	01JAN99	15MAR94	08APR88
2A*	01APR96	01APR96	01APR96	01SEP94	01APR96
2B	15MAR93	15MAR93	15MAR93	22SEP91	15MAR93
3rd	22JAN96	22JAN96	22JAN96	01JUL93	15NOV87
4th	01MAY89	01MAY89	01NOV87	01MAY89	01AUG1979

## EMPLOYMENT NUMBERS

Employment-Based	All Chargeability Areas Except Those Listed	CHINA-Mainland born	INDIA	MEXICO	PHILIPPINES
1st	c	c	c	c	c
2nd	c	15APR98	15SEP99	c	c
3rd	c	01JUN97	01FEB97	c	c
Other Workers	01APR95	01APR95	01APR95	01APR95	01APR95
4th	c	c	c	c	c
Certain Religious Workers	c	c	c	c	c
5th	c	c	c	c	c
Targeted Employment Areas	c	c	c	c	c

**DV NUMBERS FOR AUGUST 2000**

<b>Region</b>	<b>All DV Chargeability Areas Except Those Listed Separately</b>	
<b>Africa</b>	<b>AF 28,850</b>	<b>Except: Nigeria AF 13,675</b>
<b>Asia</b>	<b>CURRENT</b>	
<b>Europe</b>	<b>EU 21,000</b>	<b>Except: Albania EU 14,650</b>
<b>North America (Bahamas)</b>	<b>NA 54</b>	
<b>Oceania</b>	<b>OC 825</b>	
<b>SOUTH AMERICA, CENTRAL AMERICA, and the CARIBBEAN</b>	<b>SA 1,915</b>	

**DV NUMBERS FOR AUGUST 2000**

<b>Region</b>	<b>All DV Chargeability Areas Except Those Listed Separately</b>	
<b>Africa</b>	<b>AF 28,850</b>	<b>Except: Nigeria AF 13,675</b>
<b>Asia</b>	<b>CURRENT</b>	
<b>Europe</b>	<b>EU 21,000</b>	<b>Except: Albania EU 14,650</b>
<b>North America (Bahamas)</b>	<b>NA 54</b>	
<b>Oceania</b>	<b>OC 825</b>	
<b>SOUTH AMERICA, CENTRAL AMERICA, and the CARIBBEAN</b>	<b>SA 1,915</b>	

**DV NUMBERS FOR SEPTEMBER 2000**

<b>Region</b>	<b>All DV Chargeability Areas Except Those Listed Separately</b>	
<b>Africa</b>	<b>AF CURRENT</b>	<b>Except: Nigeria AF 13,676</b>
<b>Asia</b>	<b>CURRENT</b>	
<b>Europe</b>	<b>EU 21,030</b>	<b>Except: Albania EU 14,669</b>
<b>North America (Bahamas)</b>	<b>NA CURRENT</b>	
<b>Oceania</b>	<b>OC 850</b>	
<b>SOUTH AMERICA, CENTRAL AMERICA, and the CARIBBEAN</b>	<b>SA 2,011</b>	

**ADVANCE NOTIFICATION OF RANK CUT-OFFS WHICH WILL APPLY IN OCTOBER**

<b>Region</b>	<b>All DV Chargeability Areas Except Those Listed Separately</b>
<b>Africa</b>	<b>AF 12,500</b>
<b>Asia</b>	<b>AS 5,100</b>
<b>Europe</b>	<b>EU 14,000</b>
<b>North America (Bahamas)</b>	<b>NA 10</b>
<b>Oceania</b>	<b>OC 675</b>
<b>SOUTH AMERICA, CENTRAL AMERICA, and the CARIBBEAN</b>	<b>SA 10350</b>

## **8. BORDER NEWS**

**The Border Patrol is investigating whether two Cuban-Americans detained for their role in smuggling 33 Cubans to Florida are part of a larger Cuban smuggling ring based in Miami, Florida. The pair was arrested following a 20-mile chase after Border Patrol agents saw them in a boat near the location where the migrants had come ashore.**

**\*\*\*\*\***

**Twenty-two people have died in an attempt to reach the US from Guatemala. According to the sole survivor, they boarded a boat on July 13<sup>th</sup> at the Guatemala-Mexico border. They were caught in a storm the next day and their boat capsized in the Pacific Ocean off the coast of Mexico.**

**\*\*\*\*\***

**Three cameras are being installed along the northern border in New York to try to stop migrants from entering the US by boat or raft across the Niagara River. The cameras will allow for 24-hour monitoring, and because they have infrared detection, can be used at night. About 2000 people a year are arrested for illegally entering the US in the area.**

**\*\*\*\*\***

**Four stowaways from Cameroon on board a cargo ship bound for Florida peacefully surrendered to the US Coast Guard after the crew locked them out on the deck and radioed the Coast Guard. According to the stowaways, they had been beaten by the crewmembers. The crew, however, claimed that the stowaways had attacked one crewmember and threatened the rest. The stowaways had been on board the ship since April 30, leading to speculation as to why they were only now reported. One possible reason is that captains are often reluctant to report stowaways because the shipping company will face fines.**

**\*\*\*\*\***

**A woman was shot and killed following an argument over payment she was to receive for her role in sheparding a group of smuggled immigrants to a safe house. The woman, Maria S. Gutierrez, herself once an undocumented immigrant, was shot by a man who had been deported for a felony conviction two years ago. The man confessed to police and was arrested along with a companion. Family members say they cannot understand why she took such risks when she was paid only \$100 for each person she assisted, although they believe that she was motivated by her concern to help others find a better life in the US.**

\*\*\*\*\*

More than two dozen Dominicans were discovered aboard a ship on the Mississippi River just north of New Orleans and taken into INS custody. They were found by the ship's captain, who notified authorities and landed as soon as possible. He said that none of the stowaways attempted to resist, although two climbed down a rope off the ship. They have not been found. Seven of the people are juveniles. All of those involved face deportation. Authorities say it is not uncommon for Dominicans to try to sneak into the US through New Orleans, as many ships from the Dominican Republic frequently sail there.

---

## 9. NEWS FROM THE COURTS

### Gorbach v. Reno, Ninth Circuit

In this case, the court ruled that the INS does not have the power to denaturalize a person, and that only district courts can issue orders revoking a grant of citizenship.

In 1990, Congress made a significant change in the naturalization process. Before then, only a court could grant citizenship. Afterwards, the sole authority to grant citizenship was given to the Attorney General. However, the authority to revoke a person's naturalization remained with US District Courts alone. One section of the revocation statute, however, provides that nothing shall limit the Attorney General's power to reopen or vacate an order of naturalization.

In 1996, the INS issued regulations dealing with the revocation of naturalization. These regulations state that the INS may revoke a grant of naturalization in some circumstances and need not seek revocation through the district courts. After these regulations went into effect a number of people whose naturalization the INS was attempting to revoke through the regulatory administrative procedure sued, claiming that there was no basis in law for the authority granted in the regulation.

A district court granted an injunction prohibiting the INS from administratively denaturalizing a person. The INS appealed to the Ninth Circuit, which, last fall, upheld the regulation. The plaintiffs then asked a full panel of the court to rehear the case. They did, resulting in this opinion.

For an administrative agency such as the INS to enact a regulation, there

must be statutory authority for it. The only thing Congress explicitly authorized the Attorney General to do with regard to naturalization is to grant it. There is no express authority for the Attorney General to denaturalize citizens. There is a statutory scheme providing rules for denaturalization in the district courts.

The INS argued that the following provision gave it the power to denaturalize: “Nothing contained in this section shall be regarded as limiting, denying, or restricting the power of the Attorney General to correct, reopen, alter, modify, or vacate an order naturalizing the person.” This type of provision, called a savings clause, is designed to preserve parts of a statute when other parts of it are being amended. They do not create any separate law. Moreover, since the power to naturalize was granted to the INS, there is no longer an order, as there was when naturalization was conducted by the courts. There is only a certificate of citizenship, which the Attorney General may revoke. However, the statute specifically provides that the revocation of a certificate of citizenship does not affect the person’s citizenship status. In essence, the court found that this savings clause preserved no authority, because there is no order.

The INS also argued that the power to naturalize necessarily includes the power to denaturalize. The court found, however, that there is no statutory authority for such a proposition. Courts have the power to vacate their judgments, but only because it has been granted by Congress. If it is necessary for a court’s power to vacate a judgment to be confirmed by Congress, it is highly unlikely that the INS has such power in the absence of confirmation by Congress.

As the court explained, administrative agencies are best suited for dealing with large numbers of similar things, such as naturalizations. However, in part because of the mindset of administrative agencies caused by dealing in large volumes, they are, as the court said “dubious instruments for performing relatively rare acts catastrophic to the interests of the individuals on whom they are performed. While it might be appropriate to give the Attorney General the authority to denaturalize if there was a high rate of error in granting naturalizations, there is not such a high rate of error. The INS is seeking to revoke the naturalization of 369 of the 1,049,867 people it naturalized between August 1995 and September 1996. Given the few number of cases in which naturalization is improperly granted, and the incredibly severe consequences of denaturalizing a person, it is not reasonable to assume this power would be granted to an administrative agency.

There are also other reasons for doubting that Congress intended to give the Attorney General the power to denaturalize. There has been a historic concern that the naturalization process can be improperly politicized –

indeed, one of the complaints against the King of England found in the Declaration of Independence is that he was using the power of citizenship to prevent the population of the colonies. The Supreme Court has always read denaturalization statutes narrowly, limiting the power to denaturalize to the federal courts. In 1951 the Supreme Court ruled that a state court's power to naturalize did not include the power to denaturalize, rejecting the argument now being made by the INS that the power to naturalize includes the power to denaturalize. While Congress later changed the outcome of this case by granting state court the express power to revoke naturalizations they granted, the principle remains the same – that denaturalization must be conducted in strict accordance with the rules proscribed by Congress.

Therefore, the court found that the regulation providing for administrative denaturalization was without statutory authority, and affirmed the injunction preventing the INS from using the regulation to conduct denaturalizations.

\*\*\*\*\*

#### Agbuya v. INS, Ninth Circuit

In this case, the court found that the petitioner had been persecuted on the basis of an imputed political opinion and was entitled to asylum.

Agbuya, a citizen of the Philippines, had worked in the personnel department of a mining company. She was responsible for notifying employees that they were being disciplined or terminated. Between 1985 and 1991, the company underwent significant reorganizations that resulted in the termination of many workers. The union that represented the miners began to call for her to be fired. Agbuya learned that the union had been infiltrated by members of the New People's Army (NPA), a communist guerilla group that was responsible for numerous kidnappings and murders. Fear of threats from the NPA caused her to resign her position in 1991.

A few months after her resignation, three men kidnaped Agbuya. She was held for one week, until her family paid a ransom. The men who were holding her identified themselves as members of the NPA who were angry at her treatment of the mineworkers. During the time she was held she was kept blindfolded and physically abused. Following the instructions of her kidnapers, she never reported the incident to the police. In 1992 she fled to the US and sought asylum.

An Immigration Judge denied her application for asylum, finding that she had not established a well-founded fear of persecution. The Board of

Immigration Appeals affirmed, finding that any persecution she had suffered was not because of her political opinion. Instead, according to the Board, the mistreatment she suffered was because of her role in the personnel department. Agbuya appealed to the Ninth Circuit.

The Ninth Circuit disagreed with the Board, finding that Agbuya had been persecuted on the basis of a political opinion that was imputed to her by the NPA. The court found that while it was her employment that brought her to the attention of the NPA, given the political situation in the Philippines, her actions on behalf of her employer took on significance beyond their impact on the miners. The court found the fact that she was kidnapped after she quit her job to be very important, indicating that she was being targeted for more than just her job. In the view of the NPA, as someone responsible for firing workers at one company, Agbuya was an enemy of all workers in the Philippines, and therefore an enemy of the NPA.

It is not necessary that Agbuya actually hold a political opinion opposed to the NPA if the NPA imputed such an opinion to her, which, according to the Ninth Circuit, was the case. It was her perceived opposition to communism that caused her to be persecuted. Having found that Agbuya established past persecution, she is entitled to a presumption of a well-founded fear of future persecution. The INS failed to rebut this presumption. According to the State Department Country Condition Report on the Philippines, the NPA continues to kidnap and murder political opponents, and the government has been unable to control their activities. Therefore, she was granted asylum.

\*\*\*\*\*

### Singh v. INS, Ninth Circuit

In this case, the court found that an Immigration Judge had wrongly concluded that the petitioner was not credible, and ruled that he should be granted asylum.

Singh sought asylum in the US, claiming that he was persecuted by the Hindu majority in India. His application was rejected by an Immigration Judge and affirmed by the Board of Immigration Appeals.

On appeal the INS argued that the IJ had not made a credibility determination, but had denied asylum because Singh failed to present sufficient evidence in support of his claim. The Ninth Circuit disagreed, finding that the IJ had clearly made a credibility determination, saying that Singh's testimony was not "plausible," and "simply doesn't have the ring of truth." At no point did the IJ address the sufficiency of the evidence Singh presented.

When reviewing the denial of an asylum application, a court must uphold the decision of the IJ and BIA if it is supported by substantial evidence. In this case, the court found that none of the reasons given for the adverse credibility determination was plausible. First, the court found that the IJ relied too heavily on the actual words used, and did not take into consideration the fact that Singh was speaking through a translator. None of the minor discrepancies based on a few words was deemed substantial enough to support an adverse credibility determination.

The Ninth Circuit found that Singh had established past persecution, entitling him to a presumption of a well-founded fear of future persecution were he returned to India. The INS attempted to rebut this finding with the State Department Country Condition Report on India, however, the court found it insufficient. Therefore, the court ruled that Singh be granted asylum and withholding of deportation.

\*\*\*\*\*

#### Nagahi v. INS, Tenth Circuit

In this case, the court ruled that INS rules that attempt to limit federal court jurisdiction are without effect.

In 1985, Nagahi had a run in with the law. He was sentenced to six months probation. After he successfully completed probation, his record was expunged. In 1994, he applied for citizenship. One of the questions on the citizenship application asks about a person's criminal background. Nagahi consulted several people about how to answer this question, given that his record had been expunged. Relying on the advice of state officials and Utah law, he answered no.

He was interviewed, and was repeatedly questioned about his response. The INS denied the application for naturalization based on two grounds, first because of his criminal activities, and second for his failure to tell the INS about it. Nagahi appealed this decision within the INS, and the denial was upheld. He was told he had 120 days in which to appeal the denial to federal court. At this point he retained an attorney. He told the attorney of the 120 day deadline, but rather than take the matter to court, the attorney pursued it within the INS. The INS stuck to its decision to deny, and issued a letter reiterating its decision to deny the application, and denying the motion to reopen.

At this point counsel withdrew, and Nagahi filed a petition for review in federal court. The court dismissed the petition as untimely filed. Nagahi then appealed to the Tenth Circuit.

Under the Immigration and Nationality Act, district courts have jurisdiction to review denials of naturalization. The statute does not provide a time limit within which such appeals must be taken, but INS regulations do – appeals must be filed within 120 days. On appeal Nagahi argued that the INS did not have the authority to limit the jurisdiction of a federal court. The INS argued that the 120 day period is not jurisdictional, and that its decision on the time limit should be given deference.

While the INS is authorized to make regulations necessary to affect its authority to conduct naturalizations, the court found that this authority did not include the power to limit judicial review. Regardless of what the INS calls the 120 day limit, its effect is to limit federal court review. Such a rule is beyond the power of the INS, and is not entitled to any deference. Therefore, the case was remanded to the district court for a hearing on the merits.

The text of the opinion is available online at <http://laws.findlaw.com/10th/984191.html>

---

## 10. GOVERNMENT PROCESSING TIMES

Please note that there have not been any processing times released in the last week. For the latest numbers, however, go to <http://www.visalaw.com/information.html>.

---

## 11. NEWS BYTES

Three former INS district directors have joined the growing number of people saying that amnesty needs to be offered to the millions of undocumented immigrants living in the US. They announced their support of such a program at a news conference in New York City, saying it was necessary because of the strong economy and the difficulty filling jobs in many sectors. They stressed that if an amnesty is granted, it should be accompanied by increased border enforcement and new measures to address future US labor market needs. One of those supporting a new amnesty was Benedict Ferro, district director of the INS in Baltimore. He was responsible for running the amnesty enacted in 1986.

\*\*\*\*\*

Richard Riordan, the mayor of Los Angeles, has criticized the INS for taking too long to process travelers at Los Angeles International Airport. In

a recent letter to INS Commissioner Doris Meissner, he said that times for passengers to pass through inspection has significantly increased this year. Many take more than two hours for processing, well over the stated INS time it should take – 45 minutes.

\*\*\*\*\*

A number of Honduran and Nicaraguan nationals in the US in Temporary Protected Status granted in the wake of Hurricane Mitch, which devastated Central America in October 1998, are being fired from their jobs despite the fact that they are legally authorized to work. The problem is being caused by confusion about the TPS program. When it was initially granted, it was to expire this summer. However, last May the INS extended the period of TPS. The cards issued those having TPS have not been updated, so many employers, not aware of the extension, are firing employees. The INS says it will call employers who have fired workers and explain the situation to them. Not all employers, however, are reassured by this, and refuse to rehire the workers it fired because of fear of being hit with employer sanctions. Hondurans and Nicaraguans in TPS are authorized to work until July 5, 2001.

\*\*\*\*\*

Jurisdiction over asylum applications filed by individuals residing in Hawaii and Guam is being moved from the San Francisco Asylum Office to the Los Angeles Asylum Office. Also, the place of filing for residents of Hawaii and Guam is changing from the Nebraska Service Center to the California Service Center. The Nebraska Service Center will continue to accept asylum applications filed by residents of Hawaii and Guam until August 23, 2000, after which date they will be rejected.

\*\*\*\*\*

An Immigration Judge has refused to drop charges of illegal entry against Meriam Al-Khalifa, the member of the Bahraini royal family who snuck into the US to be with the US Marine she fell in love with in Bahrain. This means that Al-Khalifa will have to win political asylum to be able to stay in the US. No date for a future hearing has yet been set.

---

## 12. THE ABC'S OF IMMIGRATION – FAMILY BASED IMMIGRATION OVERVIEW

This article will begin our series on family-based immigration with a general overview of the process. Immigration through a family member

who is a US citizen or permanent resident is the most common way of gaining US residency. All that is required is the qualifying family relationship. The ease with which a person can immigrate through a family member is in keeping with American notions of the importance of the family.

The first question to address in a family-based immigration case is whether a qualifying family relationship exists. Qualifying relationships are grouped into two main categories – immediate relatives and other close family members. Immediate relatives of US citizens are given special preferential treatment. First and foremost, they are allowed to immigrate in unlimited numbers. The following are immediate relatives:

- Spouses
- Children, unmarried and under 21
- Parents

Other close family members of citizens and permanent residents are also allowed to immigrate, subject to annual numerical limitations. The following are other relatives who are allowed to immigrate, and the annual limits on each category:

- Unmarried adult children of citizens – 23,400
- Spouses and unmarried children of permanent residents – 114,200
- Married adult children of citizens – 23,400
- Siblings of citizens – 65,000

There are many technical rules relating to the allotment of visas in this group, as well as definitions of the family relationship. These will be discussed in a future article.

### Preparing the INS application

The elements of the application that must be submitted to the INS are the same for each type of family member. The main INS form that is used in all family cases is the I-130 Petition for Alien Relative. The petitioning relative must complete this form. The application must include documentation of the qualifying family relationship, and of the petitioner's status as a citizen or permanent resident. The filing fee is \$110. When the application is made for a spouse, it must include copies of Form G-325A – Biographic Information for each spouse, as well as two color photos of each spouse. When the application is filed for an immediate relative not subject to annual numerical limitation and the relative is in the US, an application for adjustment of status may be filed at the same time.

If the petitioner is in the US, the application is filed with either the appropriate INS Service Center or INS local office. Applications for

immediate relatives are filed with local offices, and those for other relatives are filed with the Service Center. If the petitioner is outside the US, they may file the application either with the Service Center that had jurisdiction over the place where they last resided in the US, or with the overseas INS office that has jurisdiction over their overseas residence. If the petitioner is overseas on US government business, the application is filed in the US. In some cases, a petitioner residing outside the US may file the application with the US consulate having jurisdiction over their residence. However, not all US consulates accept such petitions.

If the application is in order and shows the qualifying relationship, if the alien is an immediate relative, they can either adjust status or immediately apply for an immigrant visa at a US consulate. If the alien is not an immediate relative, they must wait until a visa number become available to either adjust status or apply for an immigrant visa. In such cases, the priority date is the date on which the INS received the complete application.

---

### **13. CRITICISM CONTINUES TO DOG INS OFFICIALS AT PORTLAND AIRPORT**

Despite efforts at improvements, INS officials in Portland, Oregon continue to receive criticism for their treatment of international visitors. While only 35 people were refused entry during the months of May and June, half the rate at which they were being refused earlier this year, people are still turned away at more than three times the rate of other West Coast airports.

These days, the primary complaints from travelers are that immigration officials engage in intimidation of passengers and are unnecessarily rude. Delta Air Lines' representatives agree. On July 5th a family from the Philippines coming to the US for a funeral was deeply upset by their treatment. Delta representatives tried to assist them, but the situation grew worse. Eventually they were admitted, but refused to leave the US through Portland.

A recent meeting between INS officials, airport authorities and the community appeared to be productive. The INS continued to promise that detained visitors would not be jailed, but will be allowed to stay in hotel rooms. Also, the INS plans to implement a telephone service that will allow for Japanese translations.

However, the meeting also revealed more system problems in the attitudes of the INS. One person asked why the immigration inspectors wore semiautomatic handguns. The INS Portland Port Director said it was part of the uniform. The director of public relations for the western region of the INS suggested that inspectors be allowed to wear ordinary clothes, and

that they consider smiling at the visitors.

The INS operation at the Portland airport will be undergoing a “comprehensive, top-to-bottom review.” An INS spokesperson says that the timing of the review is purely coincidental and is not related to complaints from visitors. Nonetheless, it will provide an opportunity for travelers to voice their complaints about treatment they have received at the airport. The audit will be conducted during the last two weeks of August. Those who want to provide information to be considered in the review should send it to Kathleen M. Stanley, assistant director, INS Office of Internal Audit, 425 I Street N.W., Washington, D.C. 20536.

---

#### **14. JUDGE INDEFINITELY DELAYS DEPORTATION OF THAI TODDLER**

A federal judge has indefinitely delayed the deportation of a three-year-old Thai boy who was brought to the US as part of a scheme to attempt to illegally enter the US. The boy, who was allegedly sold by his mother, has also been found to be HIV positive.

Officials initially planned for the boy’s grandparents to take custody of him and return with him to Thailand. However, Thai activists in Los Angeles, where the boy entered, have protested this plan, arguing that he should not be returned until there are assurances that he will receive proper care in Thailand and will not again be used in smuggling efforts. They are also concerned that his HIV status will make it nearly impossible for him to have a normal life in Thailand.

Along with delaying the boy’s deportation, the judge also said that the boy’s court appointed guardian could file an asylum application for him. This will inevitably create comparisons with the Elian Gonzalez case, in which the federal courts upheld the INS position that in most cases, only a parent can apply for asylum for a child. The Thai boy does not have parents and many are closely watching to see if the INS tries to extend its “Elian Doctrine” to cases involving grandparents.

---

#### **15. INVESTIGATION INTO BEATING OF MIGRANTS EXPANDS**

Police have arrested seven teenage boys in connection with the beating of five migrant workers outside San Diego earlier this month. Prosecutors say that the boys, aged 14 to 17, will be tried as adults under a new California law. They have been charged with assault, robbery, hate crimes, and elder abuse. All of their victims were over 60. According to police, the boy, all of whom are white, beat the migrants, who were all Hispanic, because they did not like Mexicans. The beatings occurred on July 5<sup>th</sup>.

**The migrants were beaten with blunt objects and shot with pellet guns.**

**Police have recovered many of the instruments used in the beatings, including a pitchfork, a metal pipe and a steel bar. Evidence also showed that one of the victims was chased, dragged into bushes and beaten. Bloodstains were found all around the scene.**

**Activists have used the incident to call for more protection of migrants. They say that migrants are routinely harassed and threatened. Police patrols of the area where the beatings occurred have been increased. Also, a full-time liaison with the migrant community has been stationed in the area.**

**Authorities are investigating whether the beating death a few days before this attack is related. In the earlier attack, a 17-year-old boy who acted as a broker between migrants and employers was beaten to death near the location of the other attacks.**

---

#### **16. BASEBALL PLAYER DEFECTS AS JUSTICE DEPARTMENT INVESTIGATES TEAM FOR IMMIGRATION LAW VIOLATIONS**

**The Department of Justice has opened an investigation of the Baltimore Orioles Major League Baseball team. At issue is whether the team discriminates against Cuban players in its hiring practices. Last spring Syd Thrift, the team's vice-president of baseball operations was reported as having said that the team had a policy against hiring Cuban defectors. Then in May Sen. Jesse Helms (R-NC), Chairman of the Senate Foreign Relations Committee, wrote a letter in which he asked the Justice Department to investigate the teams hiring practices.**

**On July 6, The Justice Department told Helms that the Office of Special Counsel for Immigration Related Unfair Employment Practices had begun an investigation into whether the teams hiring practices violate laws prohibiting discrimination on the basis of a person's citizenship status. The Department is also investigating the possibility of discrimination on the basis of national origin.**

**Thrift's comments came a few months after a two-game exhibition series between the Orioles and the Cuban national team. At the time he said the team did not want to disrupt the goodwill created by the game by engaging in activities that could be seen as encouraging Cuban players to defect.**

**In related news, Cuban baseball star Andy Morales has defected to the US. He entered early this week and spent two days in detention as INS officials questioned him about the smugglers how brought him here. This was**

**Morales' second attempt to come to the US; his first, earlier this year, was thwarted when he was apprehended at sea and returned to Cuba. On his way to INS processing his agent, Gus Dominguez, took calls from three major league teams. The agent would not identify the teams, but it is safe to assume the Orioles were not one of them.**

---

#### **17.INS PUBLISHES RULE MOVING AUTHORITY FOR FARMWORKER PROGRAM TO DEPARTMENT OF LABOR**

**The INS has published the final rule that transfers primary adjudicative authority for the H-2A temporary agricultural worker program to the Department of Labor. The rule will become effective on November 13, 2000.**

**The Department of Labor already handles most aspects of the H-2A program, with the INS only ensuring that the DOL has certified the type of job and the number of openings. By consolidating authority over the program in the DOL, it is hoped that processing will improve.**

**A new form will be created that combines INS form I-129 and the DOL form ETA-750. The new form will be known as ETA-7079. The DOL will also begin accepting INS forms that relate to extensions of stay and other post-entry issues.**

**The INS will retain limited involvement. Program violations should be reported to the Nebraska Service Center.**

---

#### **18.REGULATIONS ON FAMILY UNITY PROGRAM ISSUED**

**In 1997 there was a settlement in a lawsuit regarding the Family Unity Program which called for the development of a single form for use in the program. A regulation was recently published in which the requirements of the settlement were finally addressed.**

**The Family Unity Program was created in 1990 to benefit family members of immigrants who were able to legalize their status under the 1986 Immigration Reform and Control Act. Family members are given extended periods of voluntary departure and employment authorization so that they could remain with their legalized family members in the US.**

**Prior to the settlement, applicants for family unity benefits were required to complete two forms, I-817, for voluntary departure, and I-765 for employment authorization. A new form is in the process of being approved that combines the information from the two previous forms. It will authorize voluntary departure and employment authorization for two years.**

The regulation also clarifies who is eligible for family unity benefits. Benefits are limited to spouses and unmarried children of legalized aliens. However, just because a legalized alien gains citizenship does not eliminate family member's eligibility for benefits. They will continue to be eligible for voluntary departure and employment authorization until they are eligible to adjust their status.

The new regulation also makes family members who committed certain juvenile offenses ineligible for family unity benefits. Acts that, if convicted as an adult, would be classified as a felony crime of violence that involved the use or attempted use of physical force, or an act that involved a substantial risk such force could be used, will make a person ineligible.

---

### **19.INS ARRESTS TWO IN UNAUTHORIZED WORKER EMPLOYMENT SCHEME**

An 18-month long investigation by the INS has resulted in the arrests of two people for knowingly employing undocumented workers. Authorities had long suspected labor contractor Luis Bautista of using undocumented workers, but it was not until he made an unwitting statement to a newspaper reporter that they had grounds to open an investigation.

In October 1998 Bautista made the following statements to a reporter with the San Francisco Chronicle: "I've been a contractor here for 30 years, and the (INS) hasn't bothered me once. They go about their business and I go about mine, and my workers work hard in the fields every day...I ask the workers for their mica (a work permit or resident document). Whether it's forged or not isn't my problem...And who cares? Without these Mexicans, who would pick the crops that people buy in the supermarket?"

The article prompted immigration officials to investigate. Bautista's Border Patrol file showed that between 1989 and 1992, the INS had arrested 68 people working for him without authorization. Then an employee told an undercover agent that most of the workers he dealt with lacked proper documents. Agents then recruited three employees to act as informants. According to an affidavit filed in court, they revealed that Bautista had two payment systems, one for legal workers and the other for workers without documents. Unauthorized workers were paid in cash, and Bautista withheld taxes from them, keeping it for himself.

Bautista's brother in law was also arrested. Bautista was released on \$50,000 bail, while his brother in law was released on his own recognizance.

## **20. BORDER PATROL AGENTS GO INTO MEXICO IN PURSUIT OF MIGRANTS**

**Officials in the US and Mexico are investigating the possibility that US Border Patrol agents crossed into Mexico to arrest suspected undocumented immigrants. Dozens of witnesses claim to have seen two agents cross the border just east of the Calexico border crossing and arrest a number of people.**

**At this area of the border there is no fence or other border marker. The All-American Canal does closely track the border here, but in places it is much as a mile north of the border. According to the Mexican consul in Calexico, one of the agents went half a mile into Mexico in pursuit of a group of seven migrants. Border Patrol officials have met with Mexican government officials.**

**According to a Border Patrol representative the four people who were arrested were given voluntary departure to Mexico.**

---