

SISKIND'S IMMIGRATION BULLETIN

06 OCTOBER 2000

E-mail subscribers as of September 1, 2000 - 26,777 persons (50 states/144 countries).

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1. A MESSAGE FROM SISKIND, SUSSER, HAAS & DEVINE

Dear Readers:

Last week we reported on the passage of a major H-1B bill. One of the most controversial issues discussed in connection with the bill was the \$500 worker retraining fee Congress tacked on to the 1998 H-1B law. H-1B skeptics in Congress pushed for increases of up to \$5000 per case in order to make US firms look harder for American workers and have those same firms subsidize the retraining of underutilized American workers. After the H-1B bill passed, a number of legislators were upset that the H-1B fee was not increased. The matter was quickly addressed and both Houses of Congress passed an identical bill raising the H-1B fee to \$1000 per worker. The President should sign the law quickly, probably along with the bigger H-1B bill. Hopefully, the passage of this fee increase will quell H-1B critics and help to ensure the long term survival of the H-1B program. One good piece of news for companies that are unhappy about the fee – \$40 out of every fee will be used to help speed processing of H-1B cases.

Another major bill cleared Congress for the President to sign. Congress has decided to make the Visa Waiver Pilot Program permanent. This is the program that allows more than 18 million tourists and business people from around the world to visit the US without having to first visit a consulate. The program has been a major boon to the American economy and Congress has rightly decided that short term extensions of the program are not adequate and that the intrinsic merits of a visa waiver program have been conclusively demonstrated.

Finally, last week we mentioned that we were hoping that the Latino Immigrant Fairness Act would have passed by now. Democrats are hoping to have the provision added into the Commerce, State and Justice appropriations bill and the President is threatening to veto the measure. Two Texas Republicans – House Immigration Committee head Lamar Smith and Senator Phil Gramm – are dead set against passage of this measure that would restore 245(i) and create a rolling amnesty, among other things. We're still waiting, but since Congress is expected to adjourn next week and the appropriations bill is "must pass," we are hoping to have news for you soon. Readers are encouraged to contact their legislators to urge supporting including LIFA in the CSJ appropriations bill.

This week we include our regular features including an ABCs of Immigration article on the green card lottery, the latest State Department Visa Bulletin, new Government Processing Times, News from the Courts and more.

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

H.R.5448, introduced by Rep. Lamar Smith (R-TX), would amend the Immigration and Nationality Act to give priority for certain family-sponsored immigrants based upon educational attainment and to require diversity immigrants to have a bachelor's degree.

The House approved S. 2812, which provides for a waiver of the oath of allegiance for people whose disabilities prevent them from understanding the oath. The bill was earlier approved by the Senate and will now go to the President for his signature.

Congress this week approved the extension of the Violence Against Women Act. This law provides funding to help protect women and children from abuse. As approved, the law also includes provisions originally found in the Trafficking Victims Protection Act, which creates stiffer penalties for those found to have trafficked in human beings. It also creates a nonimmigrant visa for trafficking victims.

Sen. Jack Reed (D-RI) has placed a hold on S. 2406 and H.R. 4066, bills that which would extend the special immigrant religious worker provision of the Religious Worker Visa program for nonministers. The reason for the hold is Reed's desire to call attention to the need for an adjustment of status law

for Liberian nationals. Because the bills were being dealt with in a unanimous consent agreement, a single Senator can stop all action on them. While the Liberian adjustment is a worthy issue, holding up these bills is not the best way to call attention to it. The category expired on September 30, 2000, and if it is not extended now, chances are Congress may forget about it.

This week President Clinton signed [H.R. 2909](#), the Intercountry Adoption Act of 2000, into law. This law implements the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.

3. IMPORTANT IMMIGRATION LEGISLATION PASSES CONGRESS

For many months it appeared that Congress would not get around to passing any immigration related legislation. Even the H-1B visa increase, which had seemed such a certainty last spring, and which had support across the political spectrum, seemed destined to die of inaction. It was finally passed last week, and this week has seen other important immigration related laws finally acted on. Late last week the House approved [H.R. 5362](#), which will increase the H-1B visa fee from \$500 to \$1000. The Senate passed the bill by unanimous consent on Tuesday of this week. The new law will not take effect until two months after it is signed by the President, which he is almost certain to do. The increased fee would apply to H-1B applications filed through September 30, 2003.

This week the House also passed H.R. 3767, the Visa Waiver Permanent Program. As the name implies, this bill will make the Visa Waiver Pilot Program permanent. The House passed the bill earlier this year, but when the Senate approved it they made some changes, which the House has now approved, so the bill will be presented to the President for his signature. The primary change was the creation of a special immigration status for employees of INTELSAT, a satellite communications company which until recently was controlled by various governments, but is now in the process of privatizing. The change will allow INTELSAT employees to maintain valid nonimmigrant status after the company change. The final change was the extension of the immigrant investor pilot program until September 30, 2003.

4. NEW REPORT STRONGLY CRITICAL OF EXPEDITED REMOVAL

A report from the Lawyer's Committee for Human Rights finds that INS inspectors have made serious errors in administering expedited removals. The expedited removal process allows an INS inspector to determine that a person does not have permission to enter the US, and gives them the power to deport the person immediately. According to the report, inspectors are turning away lawful visitors, asylum seekers without documentation, and in some cases, US citizens and permanent residents whose documents the inspector finds unsatisfactory.

Unlike a recent GAO report on expedited removals, (covered in a recent newsletter at <http://www.visalaw.com/00sep2/7sep200.html>) this report is not an overview of the entire process, but instead focuses on the treatment of about 100 individuals who were forced to leave the US through expedited removal. In one case, a famous Chinese dissident, Liu Nianchun was detained at Kennedy International Airport after attempting to reenter the US on a visitor's visa. He had been out of the US testifying at a United Nations conference on human rights. Liu was chained to a bench, and, according to his lawyer, kicked whenever he fell asleep. Liu was able to convince an inspector that he feared persecution in China, and was eventually granted asylum.

Another case involved a student from Jamaica attending Syracuse University. He was detained because inspectors believed his student visa was fraudulent, strip-searched twice and chained to a bench overnight. The student, who was eventually released after his documents were proven valid, said that inspectors made fun of him, telling him that Jamaicans live in the US only to mop floors.

Another story demonstrates just how much the individual inspector's discretion controls the situation. A political dissident from Guinea fled to the US after being imprisoned and tortured for his political activities. He did not have any documentation and could not speak English. According to the report, he spent more than two days in the airport, chained to a bench. When INS agents moved to place him on a plane, he struggled so much he had to be carried. During this process, the agents dropped him, injuring him enough that he had to be taken back into the airport. There is was interviewed by a different inspector, who found that he had a credible fear of persecution.

The process of expedited removal has been widely criticized by immigration lawyers and human rights advocates. They are concerned that inspectors, who are often overworked, do not have the time or training to make such important decisions, especially when they concern a person's fear of persecution. The INS maintains that it has implement enough safeguards to ensure that no person with a viable asylum claim is deported, but because once a person is out of the US it becomes difficult to

follow up, there can be no certainty that people are not being deported at the risk of their safety and lives.

5. THIRD BOND HEARING IN CASE OF PALESTINIAN HELD ON SECRET EVIDENCE

This week saw further developments in the case of Mazen Al-Najjar, the Palestinian cleric and former professor who has been in INS detention for more than three years based on evidence the government will not allow him to see. The government accuses Al-Najjar of being a terrorist, and claims that the evidence that proves this cannot be revealed for reasons of national security. More than three years ago Immigration Judge Kevin McHugh ordered Al-Najjar detained on the basis of this evidence.

Earlier this summer a federal judge ordered McHugh to hold another bond hearing, and make a decision based on the evidence the government was willing to share with Al-Najjar and his attorneys before addressing the secret evidence. (Covered at <http://www.visalaw.com/00jun3/9jun300.html>.) A few days into the hearing, it was stopped when Al-Najjar's attorneys filed an emergency motion with the federal court after McHugh announced his intention to examine the secret evidence before ruling on the public evidence. (Covered at <http://www.visalaw.com/00sep1/5sep100.html>.) A few weeks ago the federal judge again ordered McHugh to hear all of the public evidence against Al-Najjar before addressing the secret evidence. (Covered at <http://www.visalaw.com/00sep3/7sep300.html>.)

This week Al-Najjar was given another bond hearing. McHugh refused to order the government to release the secret evidence to Al-Najjar's attorneys at the beginning of the hearing, leaving them in the dark as to the nature of the government's evidence against him. The lead attorney, David Cole, who is a professor of law at Georgetown University, argued that the federal judge's ruling meant they should receive a declassified summary of the evidence before the hearing began. McHugh disagreed, and without knowing what they were up against, Al-Najjar's attorneys called former colleagues to testify as character witnesses. They testified that Al-Najjar never discussed violence or terrorist activities, and that he is a peaceful person.

Al-Najjar's attorneys also submitted affidavits from four people who said Al-Najjar was not associated with terrorists. The government sought to keep the evidence out of the record, but McHugh allowed them in after Cole pointed out that it would be the "height of hypocrisy" to allow the government to base its entire case on secret evidence but not to allow the introduction of written affidavits.

6. STATE DEPARTMENT VISA BULLETIN – NOVEMBER 2000

FAMILY NUMBERS

| Family | All Chargeability Areas Except Those Listed | China | India | Mexico | Philippines |
|---------------|--|----------------|----------------|----------------|--------------------|
| 1st | 01MAR99 | 01MAR99 | 01MAR99 | 22APR94 | 01MAY88 |
| 2A* | 22JUN96 | 22JUN96 | 22JUN96 | 01OCT94 | 22JUN96 |
| 2B | 01JUN93 | 01JUN93 | 01JUN93 | 08OCT91 | 01JUN93 |
| 3rd | 08APR96 | 08APR96 | 08APR96 | 01FEB95 | 15NOV87 |
| 4th | 15JUL89 | 15JUL89 | 15JAN88 | 15JUL89 | 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 | 08MAR99 | 01NOV99 | c | c |
| 3rd | c | 15MAR98 | 15FEB97 | c | c |
| Other Workers | 01FEB96 | 01FEB96 | 01FEB96 | 01FEB96 | 01FEB96 |
| 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 NOVEMBER 2000

| Region | All DV Chargeability Areas Except Those Listed Separately | |
|--|--|------------------------------------|
| Africa | AF 12,903 | |
| Asia | AS 5150 | Except: Bangladesh AS 5,100 |
| Europe | EU 14,100 | Except: Albania EU 4,016 |
| North America (Bahamas) | NA 15 | |
| Oceania | OC 700 | |
| SOUTH AMERICA, CENTRAL AMERICA, and the CARIBBEAN | SA 1,500 | |

ADVANCE NOTIFICATION OF RANK CUT-OFFS WHICH WILL APPLY IN DECEMBER

| Region | All DV Chargeability Areas Except Those Listed Separately | |
|--|--|------------------------------------|
| Africa | AF 13,800 | |
| Asia | AS 5,200 | Except: Bangladesh AS 5,150 |
| Europe | EU 14,200 | Except: Albania EU 4,510 |
| North America (Bahamas) | NA 15 | |
| Oceania | OC 710 | |
| SOUTH AMERICA, CENTRAL AMERICA, and the CARIBBEAN | SA 1,525 | |

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

| Region | All DV Chargeability Areas Except Those Listed Separately | |
|--|--|------------------------------------|
| Africa | AF 14,000 | |
| Asia | AS 5,400 | Except: Bangladesh AS 5,200 |
| Europe | EU 14,300 | Except: Albania EU 4,600 |
| North America (Bahamas) | NA 15 | |
| Oceania | OC 710 | |
| SOUTH AMERICA, CENTRAL AMERICA, and the CARIBBEAN | SA 1,525 | |

Finally, the State Department is warning that the third employment-based category for the Philippines is experiencing very heavy demand and will probably be to experience a backlog in December.

7. SUPREME COURT TO HEAR INDEFINITE DETENTION CASE

This week the Supreme Court agreed to hear appeals in two cases involving indefinite detention of aliens awaiting deportation. Part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 gave the INS the power to detain people convicted of certain crimes during their deportation proceedings and in some cases, after they have received a final deportation order. In most cases this is seldom more than a few days. However, nationals from some countries have spent years in detention because their home countries will not accept deportees from the US.

This is the situation that faces Kim Ho Ma, a Cambodian. There is no deportation agreement between the US and Cambodia, meaning it does not appear possible that Ma will be deported. On appeal, the Ninth Circuit ruled that because it did not appear the INS would be able to effect his deportation he could not be held more than 90 days after the deportation order became final. We discussed this case in our bulletin at <http://www.visalaw.com/00apr3/14apr300.html>, and the text of the case is available online at <http://laws.findlaw.com/9TH/9935976.html>.

Kestutis Zadvydas, the detainee in the other case the Supreme Court will hear, is stateless. He was born in 1948 in an American administered region of Germany that later became part of the Soviet Union, and then Lithuania. Neither Germany or Lithuania would accept him, saying he was not a citizen. The Fifth Circuit ruled that the INS could detain him until it could secure his deportation. We discussed this case in our bulletin at <http://www.visalaw.com/99sep/29sep99.html>, and the text of the case is available online at <http://caselaw.findlaw.com/cgi-bin/getcase.pl?court=5th&navby=case&no=9731345cv0>.

8. BORDER NEWS

Last week an INS inspector who had been found guilty of taking bribes from drug and alien smugglers was sentenced to 12 ½ years in prison. The Justice Department has called the case of Richard Lawrence Pineda one of the most importance cases of border corruption in recent years. Pineda had worked at the San Ysidro port of entry between San Diego and Tijuana, the busiest border crossing in the world. According to prosecutors, Pineda received \$350,000 in bribes.

The Border Patrol has announced a proposal for construction along the border. Most of the construction would be along the Rio Grande, but smaller projects would be located in the other southwest border states. The plan for the Rio Grande calls for the construction of 1,300 miles of road, and the installation of fences, cameras and high-intensity lights. The projects would not be built by the Border Patrol, but would be built by unarmed military construction personnel. The reason for bringing in the Army would be to allow them to obtain hands-on experience, plus it would help the Border Patrol conserve its budget. Of course, whenever the military appears at the border, there are concerns. Two years ago a Marine shot and killed an 18-year-old US citizen herding his family's goats. Since then there have been no armed military personnel patrolling the border.

9. NEWS FROM THE COURTS

In re Bahta, Board of Immigration Appeals

In this case, the Board ruled that conviction of attempted possession of

stolen property was conviction of a theft offense and thus an aggravated felony.

The respondent was convicted in 1997 in a Nevada state court of attempted possession of stolen property and sentenced to three years. The INS placed him in deportation proceedings on the basis that his conviction was for an aggravated felony. An immigration judge found that the conviction was not an aggravated felony, and ordered the proceedings terminated. The INS appealed.

Because immigration law is federal, it is necessary to develop a uniform definition of offenses that will lead to deportation that is not dependent on individual state or federal law. The respondent argued that his offense was not a theft offense because federal theft law criminalizes only receipt of stolen property, not possession of it. The Board found that federal law was not determinative, but instead examined all laws relating to stolen property offenses.

The Board found that the modern understanding of receipt of stolen property, including its use in the Immigration and Nationality Act, encompassed possession of property one knows or has reason to know has been stolen.

While the respondent did not raise the issue, the Board took the unusual step of commenting on the prosecutorial discretion of the INS. It noted that there has been much debate as to whether the INS retains discretion to forebear bringing deportation proceedings against people who have committed a criminal offense that qualifies them for deportation. The Board found that the INS does retain such discretion. While not a factor in this case, this may be a warning to the INS that it should exercise such discretion and not bring deportation proceedings against people convicted of minor offenses, especially when there are numerous equities weighing in the alien's favor.

The text of the opinion is available online at <http://www.usdoj.gov/eoir/efoia/bia/Decisions/Revdec/pdfDEC/3437.pdf>.

In re Casas-Garcia, Board of Immigration Appeals

In this unpublished decision, the Board ruled that making a false statement on a Form I-9, used to verify employment eligibility, is not a crime of moral turpitude.

The respondent, who was not lawfully present in the US, indicated on a

Form I-9 given her by a potential employer that she was a permanent resident of the US and that she had a social security number. When the INS discovered her presence, it sought to deport her for engaging in fraud to obtain an immigration benefit. The Immigration Judge found her deportable, and ineligible for cancellation of removal because lying on the I-9 was a crime of moral turpitude. A crime of moral turpitude prevents a person from establishing good moral character, which is necessary for cancellation.

On appeal the Board ruled that the IJ was in error, and found that the respondent had established good moral character. While giving false testimony to obtain an immigration benefit is a bar to establishment of good moral character, and the I-9 is filled out under oath, the information provided in the I-9 is not testimony, which must be given orally. Finding that the respondent also satisfied the hardship and physical presence requirements for cancellation, the Board granted her application for cancellation of removal.

The opinion is not available online.

10. GOVERNMENT PROCESSING TIMES

Vermont Service Center Processing Times

Jurisdiction: : Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, Washington D.C. and West Virginia.

The following is the Vermont Service Center Processing Time Report for the period ending October 2, 2000:

| Application/Petition Type | Processing for Initial Receipt Date | Receipt Notice Processing Time in Days | |
|--|-------------------------------------|--|-----|
| | | From | To |
| Business & Non-Immigration Services | | | |
| I-102 | Current | 60 | 90 |
| I-129 Cap Cases | 08/15/00 | 60 | 120 |
| I-129 Extensions | 08/21/00 | 60 | 120 |

| | | | |
|---|------------|-----|-----|
| I-140 Immigrant Worker | 07/03/00 | 150 | 240 |
| I-360 Pet for Widow/Spec Imm | Current | 90 | 180 |
| I-539 Change/Extend NI Status | 08/11/00 | 60 | 120 |
| I-212, I-612, I-601 Waivers | Current | 30 | 180 |
| Legalization Quest | 03/17/00 | | |
| Legalization Staging | 08/11/00 | | |
| Consular Returns | Current | | |
| | | | |
| Family Services | | | |
| I-90 Replacement Card | 09/26/00 | 240 | 360 |
| I-129(F) Fiance (e) | Current | 15 | 21 |
| I-130 Immed Rel | 04/07/00 | 180 | 600 |
| I-130 Preference | 01/12/99 | 180 | 600 |
| I-751 Remove Conditions | 01/01/00 | 360 | 360 |
| I-765 Employment Authorization – Other | 09/26/00 | 60 | 90 |
| I-824 Actions of Approved Petitions | 09/25/00 | 60 | 90 |
| I-360 Widow/Battered Spouse | Current | 90 | 180 |
| Consular Returns | 02/28/00 | | |
| | | | |
| Resident Status Services | | | |
| I-131 | Current | 30 | 60 |
| I-485 Adjustment | 08/01/99 | 365 | 540 |
| I-485 Adjustment – Health Care Workers | March 1997 | 365 | 540 |
| I-765 Employment Authorization-Asylum Based | 09/22/00 | 60 | 90 |
| I-765 Employment Authorization-TPS Based | Current | 60 | 90 |
| I-817 Family Fairness | Current | 30 | 60 |
| I-821 TPS | Current | | |
| N-600 Application for Citizenship | 09/01/99 | 30 | 60 |

Source: [American Immigration Lawyers Association](#)

Nebraska Service Center Processing Times

Jurisdiction: Alaska, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming.

The following is the Nebraska Service Center Processing Time Report for the period ending September 30, 2000:

| Application/Petition Type | Date of Cases Pending Initial Adjudication | Range of Total Processing Times by Days | |
|---------------------------------------|--|---|-----|
| | | From | To |
| I-90 Replacement Card | 06/22/00 | 60 | 90 |
| I-90-A SAW | 06/22/00 | 105 | 120 |
| I-102 Replacement of Arrival Document | 08/09/00 | 60 | 90 |
| I-129 | 08/24/00 | 45 | 60 |
| I-130 Immediate Relative | 05/19/00 | 140 | 170 |
| I-130 other | 03/15/99 | 570 | 600 |
| I-131 Advanced Parole | 08/31/00 | 45 | 60 |
| I-131 Reentry Permit | 06/08/00 | 120 | 150 |
| I-131 Ref. Travel Doc. | 09/08/00 | 30 | 60 |
| I-140 Immigrant Worker | 08/29/00 | 60 | 75 |
| I-360 Pet. for Widow/Spec. Imm. | 09/08/00 | 45 | 75 |

| | | | |
|--|------------------------|------------|------------|
| I-485 | 07/01/99 | 450 | 465 |
| I-485 Asylee | 06/02/98 | 840 | 870 |
| I-485 Refugee | 05/25/99 | 530 | 560 |
| I-485 HRIFA | 06/30/99 | 470 | 500 |
| I-539 Change/Extend NI Status - | 09/07/00 | 60 | 90 |
| I-724 All Waivers | 08/11/00 | 60 | 90 |
| I-730 Refugee/Asylee Relative Petition | 05/05/00 | 180 | 210 |
| I-751 Remove Conditions | 04/26/00 | 180 | 210 |
| I-765 (c)(8) Initial | 07/21/00 | 80 | 95 |
| I-765 Employment Authorization-Other | 08/24/00 | 45 | 60 |
| I-817 Family Unity | 09/04/00 | 45 | 60 |
| I-821 TPS | 04/10/00 | 140 | 170 |
| I-824 Actions on Approved Petitions | 08/12/99 | 400 | 430 |
| N-400 Naturalization – Initial Processing | Not adjudicated | 370 | 385 |

Source: [American Immigration Lawyers Association](#)

11. NEWS BYTES

The authors of this publication have learned through correspondence with the J-1 Waiver division of the US Department of Agriculture that the USDA will not provide attestations under the new national interest waiver law for physicians. Under regulations that were recently announced to put the law into effect, one of the requirements is that a federal agency or state department of health provide an attestation that the alien physician's work will be in the public interest. Despite its active role in acting as an interested government agency in J-1 waiver applications, the USDA has announced that it will decline to act in a similar fashion for national interest waivers.

Even as Salt Lake City, Utah prepares to welcome athletes and spectators from more than 200 countries for the 2002 Winter Olympics, the state appears likely to pass legislation that would make English the official language of the state. Polls indicate that the measure, which will be on the November 7 ballot, is likely to be approved. Unlike many such state laws, which are largely symbolic, the Utah law would prohibit the government from conducting business in any language other than English. It does make an exception for tourism related issues. The primary backer of the bill says that without such laws, the US could "end up like Canada," which requires all official documents to be in both English and French.

Last week in Seattle, Washington, American Immigration Lawyers Association member Greg Boos was honored for his work in helping to defeat Section 110, the law enacted in 1996 that would have required the INS to keep detailed records of all entries and exits into the US. Opponents claimed the law would tie up border traffic and create waits of hours. Earlier this fall Congress passed and the President signed a law that instead directs the INS to condense the information it currently receives. The award was presented by the Canadian Consul in Washington.

In an effort to ensure that the state's schoolchildren have an adequate number of teachers, schools in Utah have begun recruiting for teachers in Spain. Increasing numbers of US teachers have been retiring or leaving the profession in recent years, leaving schools desperate for qualified teachers. Teachers from Spain have the added advantage that they are not only qualified, they can teach in Spanish, which has become increasingly necessary as the number of Spanish speaking children in Utah schools grows. Currently about 25% of children in Utah schools speak English as a second language. Spain was also chosen because the country is

experiencing a surplus of qualified teachers.

A fair housing group in New York City has received a grant of \$250,000 from the US Department of Housing and Urban Development (HUD) to fight housing discrimination against immigrants. The Equality for Fair Housing Center, Inc., which is based in Flushing, a community in Queens, has been assisting HUD in uncovering cases of housing discrimination, and to help the group continue this work, HUD made the grant. The grant is specifically designed to help Asian immigrants address claims of discrimination.

A 19-year-old Mexican citizen was killed in Austin, Texas, last Friday night, becoming the fourth Mexican to be murdered in the city this year. Police discovered the body of Felix Martinez Nieto in a vacant building. He had been beaten to death. A friend, who escaped relatively uninjured, said Martinez was attacked by nine people. Police suspect robbery was the motive, as it was in the other deaths.

As a result of the increasing number of allegations that women in INS detention at the Krome Detention Center near Miami, the INS is considering housing female detainees in a different facility. No details of the proposal are being released yet, because the INS is working on a plan to completely overhaul Krome operations. Conditions and operations at Krome are also being investigated by the Justice Department, an investigation that sources say will soon result in more arrests and indictments.

An INS naturalization adjudicator has been formally charged with two counts of soliciting and accepting bribes. Theodore Filandrianos was arrested last August. According to the grand jury indictment, over a 13-month period from May 1999 to June 2000, Filandrianos solicited \$1000 bribes to approve naturalization applications without giving the required civics and English language tests. He is also alleged to have removed information from applicant's files that would have jeopardized their naturalization bid. He is also charged with soliciting bribes from physicians to include their name on the list of INS approved doctors. If convicted, he faces a maximum of 30 years in prison and fines up to \$500,000.

President Clinton this week announced the suspension of admission of immigrants and nonimmigrants who have impeded the peace process in Sierra Leone. Sierra Leone has been in a state of war for years, and there are many in the country who are attempting to sabotage peace efforts. The President has the authority to institute such a ban under section 212(f) of the Immigration and Nationality Act. The ban on admission extends to people who have planned or benefited from activities that harm the peace process, as well as their spouses, children, and parents. The Secretary of State is charged with enforcing the proclamation.

The time allowed to submit comments on a proposed rule that would allow aliens convicted of aggravated felonies to seek a waiver of deportation has been extended until October 18. In 1996, the Antiterrorism and Effective Death Penalty Act was passed, which the INS has consistently interpreted to make aliens convicted of aggravated felonies ineligible for a waiver of deportation. The proposed rule would make aliens whose convictions were final before the AEDPA was enacted eligible for the waiver.

Police in New York have arrested a man who they believe was involved in the beating to two Mexican workers in Farmingville, New York, on September 17. The 19-year-old, Ryan Wagner, has been charged with second-degree attempted murder and second-degree aggravated harassment. The Mexican workers were lured to an abandoned building by two men posing as contractors and were severely beaten. According to Wagner's attorney, he turned himself in to police. Wagner also attributed the beatings to the effects of alcohol.

Pat Buchanan, the Reform Party presidential candidate, has begun airing his first television commercial. Not surprising for someone who has been a long-time advocate of reduced immigration, the ad decries both immigration and the declining use of English. According to the ad "immigration is out of control. Bush and Gore are writing off English for good." Criticism of the ad came quickly, and from all sides of the political spectrum. Leaders of the Democratic and Republican parties in California said the ad would not appeal to voters in the state. Hispanic advocates worry that the ad could inflame hostility.

12. THE ABC'S OF IMMIGRATION – DIVERSITY IMMIGRANTS

The entry period for the DV-2002 green card lottery is this October, which makes this an appropriate time for us to address this method of immigrating to the US.

The Immigration Act of 1990 created the Diversity Visa lottery program. Under it, 55,000 visas are made available each year to nationals of countries that do not have large numbers of immigrants in the US. (Under the Nicaraguan Adjustment and Central American Relief Act, 5,000 of these visas must be used for NACARA applicants.) The requirements for qualification as a diversity immigrant are quite simple: one must be a native of a qualifying country, and must have a high school education, or within five years before the application, have two years experience in a job that requires two years of training or experience.

Natives and Qualifying Countries

Countries are selected for the lottery using a very complex formula, but essentially boils down to past rates of immigration. If the country has had less than 50,000 immigrants to the US over the prior five years, it qualifies. There are more formulas that are used to allocate the visas among the qualifying countries. These depend in part on whether the country is in a high admission region or a low admission region. In no case can a single country receive more than 3,850 visas. There are six regions, Africa, Asia, Europe, North America, Oceania, and South and Central America and the Caribbean. This year, the countries that are ineligible are: Canada, China (not including Hong Kong or Taiwan), Colombia, the Dominican Republic, EL Salvador, Haiti, India, Jamaica, Mexico, Pakistan, the Philippines, South Korea, the United Kingdom (except for Northern Ireland), and Vietnam.

Native has a much broader definition than citizen or national. A person is a native if they were born in the country. The country a person was born in is determined at the time of the application. For example, a person born in 1941 in a part of Germany that is now part of Poland would not be eligible for the lottery on the basis of their country of birth. A person can be a native of a country other than where they were born in several situations. One can be charged to a country one's spouse is a native of. Thus, a Canadian citizen who would not be eligible on their own, but who was married to a citizen of Ireland, would be allowed to apply and list their native country as Ireland. Also, if one's parents were not permanently residing in the country of birth, one can claim the parent's home country as the native country. For example, a person born in England to parents from Nigeria but studying temporarily in England would be eligible to apply with Nigeria as the native country.

Education or Experience Requirement

The second requirement is education or experience. The high school education requirement must be met by completion of a full 12-year course of study or its equivalent. Passing a high school equivalency exam is not sufficient. Even without education, an applicant can qualify through work experience. They must have two years experience in a position requiring two years of training or experience, which must have been gained in the five years immediately before the application. In determining whether a person's experience qualifies, the State Department relies on the Department of Labor Dictionary of Occupational Titles. Each job position is assigned a Specific Vocational Preparation estimate that is used to determine whether the applicant meets the experience requirement.

Making the Application

Each year the State Department accepts applications for the DV-lottery, generally in the fall. The application period is for 30 days, and applications received before or after the official entry period will not be accepted. The application is very simple. The State Department does not require a set form, only that certain information be included. The applicant must provide their name, date and place of birth, the names, dates and places of birth of any spouse or children, and if they are claiming a country other than the country of birth, indicate that as well. Finally, the application should include a mailing address where the State Department can reach the applicant if they are selected for further processing. The application must be accompanied by a passport size color photograph of the applicant. The applicant must sign their own form, and the signature must be original.

More information on this year's green card lottery is available on our website at http://www.visalaw.com/lottery_page.html.

Processing after Selection

If a person is selected for further processing, they will be notified by the State Department. At the same time, they will receive Packet III, which contains State Department forms for consular processing of an immigrant visa. If the applicant is in the US, they may apply for adjustment of status. Generally the State Department will expedite DV visa applications, because the visas are only available for one fiscal year, and the entire process must be completed within that period.

Mexican consular officials recently announced the development of a new program designed to assist Mexican nationals in the US who face the possibility of capital punishment. There are 45 Mexican nationals on death rows in the US, and the new program provides \$300,000 to provide legal assistance.

The program, called the Legal Assistance to Mexican Nationals Sentenced to Capital Punishment, is based in Minnesota, and is the first program of its kind in the US to be funded by a foreign government. Demand for such a program has increased in the recent past, as more and more foreign nationals find themselves facing death sentences in the US. Many of them were never informed of their rights under the Vienna Convention, which says that people arrested in a foreign country must be told that they have the right to seek assistance from their consulate.

One of the aims of the program is to ensure that rights under the Vienna Convention are given the same respect as Miranda rights, which are designed to ensure that a criminal suspect knows they do not have to incriminate themselves. Vienna Convention rights do stand in the same legal position as Miranda rights, because under the Constitution, treaties such as the Vienna Convention are to be given the same effect as federal law.

Along with ensuring that Mexican nationals in the US have their rights under the Vienna Convention protected, there is another reason behind the development of the new program. While executions in the US have risen to their highest levels since the death penalty was reinstated in the 1970s, Mexican law does not allow capital punishment.

14. SOUTHERN ARIZONA HOSPITALS FEELING FINANCIAL PINCH OF TREATING MIGRANTS

Hospitals in southern Arizona have lost more than \$12.5 million treating migrants injured in attempted border crossings since January 1999. While public hospitals are required by law to provide emergency treatment to patients regardless of their right to pay, there are no provisions for the hospitals to be compensated for treating these migrants. This is because the Border Patrol is responsible for the cost of medical treatment only if they injured the person or if they had taken the person into custody before taking them to the hospital.

Many hospitals claim that the Border Patrol is avoiding the costs of medical treatment by simply not arresting migrants that need medical treatment and instead leaving them at the hospital. The Border Patrol says

that cost avoidance is not part of their policy, but does admit that it has in the past. According to the chief of the Border Patrol Tucson sector, agents do attend to a person's injuries before determining a person's status in the US, not because of cost issues but because of humanitarian concerns.

As the Border Patrol's strategy on the southwest border has changed, pressures on Arizona hospitals have increased. More and more migrants are attempting to cross in Arizona, resulting in more migrant patients in the hospitals. During the last fiscal year, which ended on September 30, 2000, more than 1,300 migrants were found in medical distress in southern Arizona, the most ever.

There have been discussions between Border Patrol and hospital representatives on how to come up with a possible solution. One of the most likely solutions would be federal grants to the hospitals. A bill to provide them \$25 million was proposed in this last legislative session, but it will not be addressed before the election. However, if the pressure of treating migrants continues, it is certain a similar bill will be proposed in the future.