

SISKIND'S IMMIGRATION BULLETIN

April 6, 2001

E-mail subscribers as of 29 March 2001 – 29,246 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, 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.

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

Dear Readers:

One of the less publicized provisions of the LIFE Act, signed by President Clinton last December, is the creation of the new V visa. This is a visa that allows spouses and minor children of US permanent residents to come into the US and work while they wait for their green cards. The visa requires that the I-130 petition be pending for three years and that it was pending before the law was signed. The INS and the State Department are finally processing at least some of these cases. To find out more, read this week's ABCs of Immigration article on V visas.

We also report this week on an important immigration bill introduced this week by Representative Barney Frank (D-MA). The bill seeks to restore many of the due process rights taken away by the 1996 immigration acts.

In our News from the Courts column, we report on a landmark California Supreme Court case that will make it much easier for people convicted of crimes to have their cases reversed if they were given bad immigration advice by their criminal defense attorneys. This could help numerous people avoid deportation under the strict rules applicable to criminal aliens.

In firm news, we remind readers that on Monday we will be hosting a telephone seminar on H-1B visas. To sign up, just go to <https://secure.telalink.net/gsiskind/teleseminar.html>. We review the recent AC21 law as well as the new Labor Department regulations.

We also invite readers to visit our revamped bulletin board at <http://www.novatech.net:8080/~sshd>. Regular readers of our bulletin board will no doubt appreciate the many changes on the site. Please note that you will now need to register on the site to post messages. This will allow

us to more easily remove participants on the site who fail to adhere to the board's ground rules.

And finally, as always, we remind readers that this newsletter is published by Siskind, Susser, Haas & Devine, a law firm that represents clients throughout North America. 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. We have a number of our lawyers working overtime to accommodate the recent surge in interest in the new LIFE Act and will do so until the April 30th 245i filing deadline.

Thanks again for your continued loyalty.

Greg Siskind

2. LEGISLATIVE UPDATE

[H.R. 1242](#), introduced by Rep. Peter King (R-NY), would extend the filing deadline for section 245(i) until October 31, 2001. Earlier, Rep. Charles Rangel (D-NY) introduced a bill ([H.R. 1195](#)) that would extend the deadline until April 30, 2002.

[H.R. 1266](#), the Secret Evidence Repeal Act of 2001, introduced by Rep. David Bonior (D-MI), would amend the Immigration and Nationality Act to reform the way in which classified evidence is used in immigration proceedings. It would allow such evidence to be used only in cases opposing an application for admission, to deny discretionary relief from removal, and if the ground of deportation is participation in terrorist activities. The bill would also require certification that the same evidence could not be gathered from other sources, and that the INS request the agency that classified the material to declassify it. It would also require that during trial the use of classified evidence be governed by the standards currently applied to the use of classified evidence in criminal proceedings.

[H.R. 1306](#), the Wire Transfer Fairness and Disclosure Act of 2001, introduced by Rep. Luis Gutierrez (D-IL), would amend the Electronic Fund Transfer Act to require disclosure of exchange rates in international money transfers. Many immigrants and advocates feel that transfer services change unfairly high and hidden rates of exchange, and numerous lawsuits

have been filed over the matter.

H.R. 1327, introduced by Rep. Ed Whitfield (R-KY), would prohibit H-2A agricultural workers from filing suit against their employer except in the state where the employer resides or has its principal place of business.

H.R. 1345, the Consular Review Act of 2001, introduced by Rep. Barney Frank (D-MA), would call for the creation of a Board of Visa Appeals with the authority to review decisions of consular officers denying visas. Rep. Frank introduced another important immigration bill this week, discussed in more detail later in the bulletin.

S. 656, the Liberian Refugee Immigration Fairness Act of 2001, introduced by Sen. Harry Reid (D-NV), would allow Liberian nationals in the US on January 1, 2001 to apply for adjustment of status. People convicted of an aggravated felony or two or more crimes of moral turpitude would not be eligible, but would exempt applicants from some requirements for immigration, including that they properly entered the US.

S. 672, the Alien Child Status Protection Act, introduced by Sen. Dianne Feinstein (D-CA), would eliminate the problem of children ageing out while their parents' application for immigration is pending. Currently, if a child turns 21 before the application is approved, they are no longer eligible to immigrate with their parents. This bill would allow them to immigrate so long as the parents' application was filed before the child turned 21.

This week the first meeting of the Senate Immigration Subcommittee was held. At the beginning of the meeting, Sen. Patrick Leahy (D-VT), the ranking minority member of the Senate Judiciary Committee, made a statement expressing his hopes for the work of the subcommittee. Leahy said that he hopes that the subcommittee can work to develop a bipartisan approach to immigration issues, and said that the leadership of the subcommittee should help this. Sen. Sam Brownback (R-KS) chairs the subcommittee, and the ranking minority member is Sen. Edward Kennedy (D-MA). Leahy also outlined the areas he hopes to see the subcommittee address. Among these are restricting the use of expedited removal of asylum seekers, restoration of due process, updating the registry date, and the permanent restoration of section 425(i). Leahy's statement is available online at <http://www.senate.gov/~judiciary/pjl040401h.htm>.

A bill has been introduced in the Illinois state legislature that would allow undocumented immigrants to obtain drivers licenses. The proposal comes after a scandal in which the state secretary of state's office is accused of selling licenses to immigrants. The bill would eliminate the requirement that applicants for licenses provide a Social Security number. Supporters say the bill will make roads safer, while critics say that undocumented immigrants will be able to use the license to obtain other government documents and services to which they are not entitled.

In Arkansas, legislators have reached a compromise over the issue of requiring proof of legal US residency before issuing a person a driver's license. Essentially, the requirement will be extended to all people, not just Hispanics. Proponents of the bill, enacted in 1997, say that it was designed to prevent terrorists from obtaining licenses, but opponents maintain that it has only been used against Hispanics. An effort to repeal the requirement was defeated last month, but another version was introduced that restores the law to the pre-1997 state. If the law is passed, all first time applicants for a driver's license in the state must show proof of legal residency.

3. CALIFORNIA COURT VOIDS PENALTY CLAUSE IN H-1B VISA HOLDER'S CONTRACT

In a surprising decision, a state court judge in California ruled this week that employers cannot enforce contract provisions penalizing nonimmigrant workers who move to a new employer. The ruling, which voided a provision requiring the employee to pay \$25,000 if he changed jobs, offers hope to many people working in the US on H-1B visas.

The employer, Compubahn, which is appealing the decision, is a "body shop" that recruited foreign software programmers and placed them on projects with US businesses. Compubahn inserted a clause requiring the payment of a \$25,000 fine if the worker wanted to work for anyone else, including the business to which they are contracted. In many cases, the workers are forced to sign these contracts shortly after arriving in the US and before being allowed to work.

Dipen Joshi, a software engineer from India, filed the lawsuit. He was recruited in March 1998, but did not begin work until September of that year. In June 1999, before the expiration of his contract with Compubahn, Joshi went to work for Oracle. Compubahn sent him a letter demanding that he pay \$77,085 in damages for breach of contract, including the \$25,000 fine. Joshi was determined to not pay such a sum, and decided to fight it. He filed suit in January 2000, claiming that his contract violated a California statute prohibiting unfair competition.

Earlier this year, a judge ruled that three provisions of the contract Joshi signed with Compubahn were unenforceable. The first provision prohibited employees from working for both current Compubahn clients and businesses that might be clients in the future. The second required the \$25,000 fine. The third required employees who left within 18 months of arrival to reimburse Compubahn for relocation and immigration expenses.

Attorneys say that such a contract is unenforceable in California because of the state's law against unfair competition.

4. BORDER ARRESTS DROP SHARPLY

The number of arrests of undocumented immigrants along the US-Mexican border has dropped substantially over the past six months, leading federal officials to hope that the long awaited results of Operation Gatekeeper have finally arrived. This week it was announced that the number of arrests during the first six years of fiscal year 2001, since last October, had dropped 24% from the same period the previous year.

What was so remarkable was that apprehensions all along the border dropped during this period. This was the first time this happened since the institution of Operation Gatekeeper in San Diego in 1994. During the first six months of fiscal year 2000 there were 856,228 arrests on the border, while in 2001 there were 653,140. In previous years, even when there was a decrease in the number of crossings in one sector they would increase in another.

Operation Gatekeeper and Operation Hold the Line, launched in 1993 in El Paso cut off two main migrant routes. Migrants did not stop coming however; they merely changed the places where they tried to cross. While arrests have been dropping in San Diego for the past few years, they have been rising in Arizona and other locations on the border. During the past six months, arrests in these areas have dropped also.

While it cannot yet be said that the decrease reflects an overall decrease in migration pressures, there are a number of theories behind it. One holds that increased border enforcement has finally paid off and that fewer people are attempting to cross the border without authorization. Another theory says that increased job growth and improved economic conditions in Mexico, along with a slowing US economy, have decreased the number of people seeking to come to the US. The US Border Patrol refuses to give credit to any single factor, saying that it is a variety of things.

Critics say that the decrease is due in large part to the fact that increase border enforcement has discouraged many undocumented immigrants from returning home.

The following chart outlines the number of arrests in each Border Patrol sector, and the reduction from the previous year.

City	Arrests	% change from prior year
San Diego	55,905	-27
El Centro	93,892	-22
Yuma	45,958	-21
Tucson	240,390	-22
El Paso	54,695	-12
Marfa	5,817	-23
Del Rio	61,244	-32
Laredo	43,061	-30
McAllen	52,178	-27
Total	653,140	-24

5. MEXICAN GOVERNMENT BEGINS NEGOTIATING IMMIGRATION ISSUES WITH BUSH ADMINISTRATION

The Mexican government is urging the Bush administration to allow more Mexicans to enter the US legally and to legalize the status of those already working in the US. In a meeting last Wednesday, Mexican representatives presented the proposal to US officials, hoping that the promises made during the February meeting between Mexican President Vicente Fox and US President George W. Bush to improve the cross-border relationship between the two countries will lead to an easing of immigration restrictions.

The meeting was between high level representatives of both countries, with Secretary of State Colin Powell and Attorney General John Ashcroft representing the US and Foreign Minister Jorge G. Castaneda and Interior Minister Santiago Creel representing Mexico. The Mexican representatives presented four primary issues: legalizing the status of Mexican workers in the US, border safety, increasing the number of immigrant visas available to Mexicans, and creating a guest worker program.

Both Bush and Fox have different attitudes toward immigration than their predecessors. In the past, Mexico has considered undocumented immigration to the US to be a concern only for the US, but Fox has made it a concern for Mexico. For example, at the meeting Mexican representatives pledged to work to decrease the number of third country nationals who enter the US through Mexico. Bush has also encouraged new approaches to immigration, informed in large part by his experience as Governor of Texas. The new relationship between Bush and Fox is the first time presidents of the two countries have discussed immigration at such a high level and in such detail.

These factors make the possibility of real immigration reform seem more likely than it has in years. Support for a guest worker program has developed among a segment of Republicans in Congress, led by Sen. Phil Gramm (R-TX). Later this spring he plans on introducing legislation to create such a program. While there is disagreement about the final form such a program should have, overall support for the idea is widespread.

The Mexican government senses their opportunity and plans on working toward smaller goals, rather than seek a general amnesty. The focus is not an amnesty for workers, but a program where they could “regularize” their status, ensuring that they will receive the full protection of US labor and civil rights laws. According to Castaneda, Mexican representatives were able to discuss all their concerns, and Powell and Ashcroft were “extraordinarily receptive.” Officials hope to have concrete proposals prepared for Bush and Fox to discuss at a summit in Canada later this month.

6. INDUSTRY STUDY SHOWS HIGH TECH WORKER DEMAND SLOWING

According to a study from the Information Technology Association of America (ITAA), the demand for high tech workers is down 44 percent from last year, but employers will still face a shortage of qualified applicants. The report says that worker demand is down from 1.6 million positions in 2000 to 900,000 in 2001, and places the cause of the decline on the slowing economy. Another reason, they say, for the decline is the increased number of workers with tech skills. The overall number of people employed in high tech positions has increased from 10 million in 2000 to 10.4 million in 2001.

Critics say that the report shows that the high tech worker shortage has been greatly exaggerated, and that programs to educate existing US workers are effective. They add that recruitment of workers among

minorities and women continues to be low. It may be for the best that demand for tech workers in the US is slowing, because high tech industries are growing in other countries, and demand for foreign high tech workers is increasing around the world.

The ITAA has supported increases in the annual H-1B visa cap. It expects that the cap will not be reached this year. The President of the ITAA, Harris Miller, is pleased by this prediction, saying, "we've always said all we want in an H-1B visa program is a reasonable cap, and the marketplace will determine the actual demand." The report indicates that this may be the case.

A summary of the report is available online at <http://www.itaa.org/workforce/studies/01execsumm.htm>

7. TRIAL BEGINS IN IMMIGRANT INVESTOR VISA CASE

Trial began last week in a case dealing with immigrant investor visas. Two men, James F. O'Connor and James A. Geisler are charged with visa fraud, bankruptcy fraud, conspiracy to launder money and income tax evasion. They had run the Interbank Group, a business that the government says was engaged in a wire transfer scheme related to the funding of investments needed under the immigrant investor program.

Howell Jones, a businessman from the Bahamas, testified that he acted as a middleman in the transactions in which hundreds of thousands of dollars was transferred between bank accounts to create the illusion of a sufficient investment. The immigrant investor visa requires an investment of \$1 million, or \$500,000 in certain designated areas. Jones said that the transfers were so frequent and involved such large sums of money that officials at one of the banks involved became suspicious. There were more than 160 transfers over an 18-month period.

Prosecutors say that O'Connor and Geisler designed the scheme to make it appear as if the required amount of money had been invested when in fact it had not. Along with attempting to defraud the government, they are also accused of defrauding their clients, who were told that they could secure permanent residency with an investment of as little as \$100,000. They were told that their money would be kept in an escrow account until they were granted a visa. Several have testified during the trial that they lost all their investment money and did not receive a visa.

One victim of the scheme who testified, Simon Oliver, said that when he confronted Geisler with the illegality of the scheme, Geisler admitted that

the plan did not comply with the law, but said that the business had to do it.

Another witness was Mark Siljander, a former congressman from Michigan. He was a consultant with Interbank for a time, and testified that he left because of his growing concern about how client money was handled. He said that his repeated requests for an audit of the business were denied.

Geisler and O'Connor filed more than 300 visa applications based on the scheme. According to Frank Ricci, who has pled guilty to visa fraud and money laundering, Interbank repeatedly filed fraudulent documents with the INS. After telling clients that Interbank would make up the difference between the \$100,000 the client invested and the minimum \$500,000 required by law, documentation of a full \$500,000 investment by the client would be submitted to the INS without any loans involved. Ricci also testified that he told clients they were under no obligation to repay the loans.

8. BORDER NEWS

A 23-year-old North Carolinian has been indicted in Colorado on charges of transporting undocumented immigrants for commercial gain. Eduardo Ramos Modesto was charged after the van he was driving in crashed in Colorado, killing two and injuring the eight other passengers. Authorities were investigating whether Ramos was involved in immigrant smuggling.

Following a two-day operation in South Florida, the INS arrested 25 criminal aliens last week. Eighteen of those arrested had been convicted of sexual offenses. All were placed in deportation proceedings.

Four Border Patrol agents in California assisted a woman from Afghanistan who was in labor last weekend. Agents heard the woman, who was accompanied by her husband and two children. The child was not breathing immediately after birth, and one of the agents likely saved its life by giving mouth-to-mouth resuscitation.

The US government this week announced that it would grant refuge to 24 Vietnamese who have fled to Cambodia if the United Nations determines

that they are entitled to refugee status. The 24 people are members of the Montagnard ethnic minority, and they say that they have been persecuted by the government of Vietnam for participating in demonstrations against the government. The UN High Commission for Refugees is in the process of seeking access to the people.

Responding to increasing number of Colombian nationals seeking asylum in the US, the State Department recently announced that Colombia would be removed from the list of countries whose nationals are allowed to transit through the US without a visa. According to the government, about 30 Colombians a day have sought asylum at the Miami international airport this year. The US is not the only country to crack down on Colombia. In March, the European Union announced that visas would be required of all Colombian visitors. Asylum applications from Colombian nationals have increased significantly in recent times, from 427 in fiscal year 1999 to 2,747 in 2000. So far in fiscal year 2001, 1,447 applications have been filed. Advocates say that the US should grant temporary protected status to Colombians in the US in light of the conflict in the country.

Police in Riverside County, California arrested 32 undocumented immigrants on board a freight train last week. Railway workers found them during a routine stop. Police said that the immigrants were in good health, and that it was not known where they boarded the train.

A former military officer in Honduras was arrested last week in Florida. Juan Angel Hernandez-Lara was deported in 1990 after he admitted to kidnapping and torturing four political activists. He will be prosecuted for unlawfully reentering the US after being deported. He faces up to ten years and prison, and will likely be deported again.

Attorney General John Ashcroft last week announced that he was ordering US law enforcement agencies to increase their efforts to combat trafficking in people. Along with increased enforcement efforts, Ashcroft will also be issuing guidelines to federal prosecutors on how to pursue cases under the Trafficking Victims' Protection Act. The number of prosecutions of incidents of human smuggling has been increasing in recent years, from 27 in 1999 to 75 in 2000.

An Immigration Judge in San Antonio has ordered the termination of deportation proceedings against Antonio Perez, who was facing deportation on the basis of a felony DUI conviction. Responding to the ruling of the Fifth Circuit in Chapa-Garcia v. INS last month, Judge Susan Castro ruled that the Fifth Circuit decision eliminated the authority of the INS to deport people based on felony DUI convictions, at least in the states in the Fifth Circuit – Texas, Louisiana and Mississippi. The INS had maintained that a DUI was inherently a crime of violence, but the Fifth Circuit disagreed. The INS maintains that because the Chapa decision dealt with the sentence of imprisonment for unlawfully reentering the US after deportation, it does not impact its ability to deport DUI offenders. Attorneys in Texas say that a growing number of Immigration Judges are following Castro’s lead and terminating deportation proceedings in such cases.

Twenty-three Chinese immigrants found stowed away in containers aboard a cargo ship this week in the Port of Long Beach are said to be in good physical condition following their weeks long journey across the Pacific. This was the 19th time in the past two years that stowaways have been found in cargo ship containers in west coast ports.

Border Patrol agents at the border crossing in McAllen, Texas found 39 immigrants in a tractor-trailer, including a three-year-old girl. Officials said that when they were rescued, the immigrants were having difficulty breathing. Three people were arrested on smuggling charges.

A Border Patrol agent died after being struck by a tractor-trailer just north of Laredo, Texas. The agent, Jason Panides, had just arrested four undocumented immigrants when he stepped into the road in front of the truck. He was the second agent to die in the line of duty this year. The other agent was also killed in a traffic accident. Over the past ten years, 19 Border Patrol agents have been killed on the job.

The Texas State Senate this week passed a resolution urging Congress to provide 18 new federal judges to handle the increasing number of drug and immigration cases filed in border counties. Because of the high volume,

some smaller cases are sent to state authorities for prosecution. The resolution also requested reimbursement from the federal government for costs associated with these prosecutions. Legislation has been introduced in Congress that would increase the number of federal judges in Texas and other border states.

9. NEWS FROM THE COURTS – CALIFORNIA SUPREME COURT RULES ON INEFFECTIVE ASSISTANCE OF COUNSEL AND IMMIGRATION PROCEEDINGS

Hugo Rangel Resendiz, a permanent resident of the US for 25 years, pled guilty in 1997 to possession of cocaine and marijuana with the intent to sell. On the advice of his attorney, he signed a form saying that he understood that if he was not a citizen, a conviction could result in his deportation. The form had a separate section indicating that the signer had discussed its contents with his attorney. At the plea hearing, Resendiz, along with five others, was told by the judge that a conviction could result in their deportation if they were not citizens. Resendiz was sentenced to three years probation and 180 days in prison.

After he was released from prison, the INS took him into custody and charged him with being deportable because of an aggravated felony drug offense. Resendiz hired a new lawyer who filed a motion with the trial court seeking to withdraw the guilty plea. At the hearing on this motion he testified that his original attorney had told him that the guilty plea would not result in his deportation, and that it would only prevent him from becoming a US citizen. He also said that he was not guilty, and pled guilty only to avoid the possibility of a sentence of five years in prison. The motion was denied. Resendiz appealed, and the Court of Appeal reversed the trial court, vacating the conviction and allowing him to withdraw the guilty plea. The state then appealed.

The assistance of counsel is a constitutional right, and cases have established that for the right to have any meaning, the assistance must be effective. If, because of ineffective assistance, a defendant pleads guilty, his constitutional rights have been violated. Whether counsel was ineffective is determined by whether it prejudiced the defendant – that is, whether, in the absence of the attorney, the result would have been more favorable to the defendant. While the state argued that there should be no ineffective assistance of counsel claims allowed over immigration issues, the court declined to make such a rule, finding that affirmative misadvice as to immigration consequences can be ineffective assistance of counsel.

California law requires that defendants be advised that guilty pleas can

have adverse immigration consequences. The state argued that this requirement should shield guilty pleas from later attack when the defendant is placed in deportation proceedings. Despite this rule, it does not eliminate the requirement under the federal constitution that a criminal defendant receive effective assistance of counsel.

The State also argued that because the immigration advice was not part of the criminal case, and that the plea was entered voluntarily, it was merely collateral and should not support an ineffective assistance of counsel claim. The court found that while the immigration consequences of a guilty plea are collateral to the criminal case, this did not mean that they were not the proper subjects of an ineffective assistance of counsel claim.

While the court found that in the circumstances presented an ineffective assistance of counsel claim could be raised, it found that the claim was not proven. The court found that there was no obligation for the defense attorney to investigate the possible immigration consequences, and that even though the attorney had assured Resendiz that there would be no immigration problems because of the plea, an action the court called “irresponsible,” the attorney’s actions did not prejudice Resendiz.

Resendiz could not prove that if he had received accurate advice he would not have pled guilty, and even had he gone to trial there was still a possibility that he could end up being deported.

While Resendiz did not benefit from this ruling, it will provide a new avenue of relief for many immigrants who pled guilty without fully understanding all the implications of such a plea.

The opinion is available online at <http://www.courtinfo.ca.gov/opinions/documents/S078879.PDF>.

10. GOVERNMENT PROCESSING TIMES

California Service Center Processing Times

Jurisdiction: Arizona, California, Hawaii and Nevada.

(Just In Time Report)

03/16/01

Petition Type	Case Date	Data Entry
I-90	01-083	01/22/01
I-102	00-121	03/20/00
I-129 L	01-125	03/09/01
I-129 H1B COS/CN	01-073	01/10/01
I-129 H1 EOS	01-104	02/13/01
I-129 H2/H3	01-121	03/05/01
I-129 E	01-127	03/11/01
I-129 O/P/Q	01-138	03/23/01
I-129 R	01-073	01/10/01
I-129 F	01-121	03/05/01
I-130 (IR) Spouse	00-268	09/19/00
I-130 (IR) M/C	01-092	01/31/01
I-130 (IR) Other	00-197	06/21/00
I-130 Pref. Spouse	98-077	01/22/98****
I-130 Pref. M/C	99-055	12/17/98****
I-130 Pref. Other	98-060	12/26/97****
I-131	01-124	03/08/01
I-140 A& B, E-1 – E-2	01-068	01/05/01
I-140 C E1-3	01-086	01/25/01
I-140 D E2-1	01-087	01/26/01
I-140 E E-3	01-096	02/05/01
I-140 G EW – 3	01-086	01/25/01
I-360 FPL/Widows/Widowers	01-110	02/21/01
I-360 BPL/Religious	01-110	02/21/01
I-526	01-084	01/23/01
I-539	00-218	07/20/00
I-485 Ready to Adjudicate	01-051	12/14/00***
I-751	00-169	03/17/00
I-765 30 day	01-107	02/16/01**
I-765 90 day	01-105	02/14/01**
I-817(initial)	98-101	02/25/98
I-817 (extensions)	99-046	12/04/98
I-824 DIVI	Vacant	Vacant
I-824 DIVII	01-116	02/27/01
I-824 DIVIII	98-177	06/11/98
I-829	99-056	11/23/98
Waivers Ready	97-078	01/27/97

"Case date" means the fiscal year and the number of the day of the year (e.g. 001 = January 1st)

"Data entry" means the receipt date of the last case taken from the shelf assigned to the officer as of the date of the JIT Report. It does not mean that the case is adjudicated on that date.

"Work days" exclude Saturday, Sunday and holidays.

Source: [American Immigration Lawyers Association](#)

11.NEWS BYTES

The State Department has begun announcing winners of the DV-2002 lottery. The Diversity Visa lottery provides 50,000 visas to nationals of countries with low rates of immigration to the US. More than ten million entries are received each year. The selection period will likely continue through July. Only winners are notified, so if an entrant does not hear from the State Department by the end of July, they must assume that they were not selected for further processing. The State Department will not verify the names of winners or losers of the lottery.

The INS has indicated that it will consider 245i applications to be properly filed if "postmarked" before April 30th even if the petition is received after that date. Also, receipts from private courier services showing that the packages were picked up on or before April 30th will also be acceptable.

Readers are reminded that a new version of Form I-129W will be required for H-1B petitions filed beginning April 13th. In a meeting with the American Immigration Lawyers Association, the INS confirmed that in the new section where employers provide information on willful violations and H-1B dependency, if those sections do not apply, an employer can leave the section blank

The INS has told the American Immigration Lawyers Association that its members should contact the agency when they have cases where clients with employment-based adjustment cases have minor children who are "aging out" and the client has changed employers pursuant to the new six month rule under AC21. Attorneys should prepare a detailed letter explaining why the AC21 requirements for changing employers are met.

The INS has told the American Immigration Lawyers Association that it will accept an affidavit from Canadians filing adjustment of status applications in the US explaining their manner in entering the US, the date of entry and the place of entry when the applicant has entered the US and not received any documentation. This will suffice to show the applicant had an inspected entry.

Last week groups of farmworkers across the country celebrated the birthday of Cesar Chavez, the immigrant who founded the United Farmworkers Union. In California, his birthday is an official state holiday, making him the first Hispanic and only labor leader to be so honored. Chavez died in 1993 at age 66 after a lifetime dedicated to improving living standards for migrant farmworkers. Chavez began working as a farm laborer after finishing the eighth grade. As an adult, he organized boycotts of lettuce and grapes that led to widespread recognition of the plight of farmworkers.

The INS recently reversed itself in the case of a Canadian-born woman who it denied was a US citizen. Renee Drake was born in Canada in 1948 to two US citizens. After being told she was not a citizen, last week she received a call from her local INS office apologizing for the error and telling her that she was, in fact, a US citizen. People such as Drake, who were born abroad to two US citizens, can either file for a certificate of citizenship from the INS, or for a US passport from the State Department. Drake's citizenship issues arose after the Internal Revenue Service penalized her for taking deductions that were only available to US citizens.

The 80 Mexican immigrants who work at the Hudson Valley Foie Gras farm in New York are fighting to be covered by a state law that guarantees workers at least one day off a week. The workers are aware of the frequent criticism that activists have for foie gras production, and say that in some cases the conditions they face are worse than those faced by the ducks they are raising. New York law currently exempts farmworkers from the provision ensuring that all workers have a day off. The farm says that if the workers were given a day off, the feeding process that is necessary to producing foie gras would be disrupted. Other agricultural concerns say that they also will suffer economically if workers are given a day off.

Eighty immigrants in the Chicago area have been ordered to retake tests to obtain driver's licenses. They were among those who were provided licenses by corrupt department of state officials who were accepting bribes in exchange for issuing the licenses. While officials have not completely examined the records of those involved, a quick examination showed that 10 of the 80 have been involved in accidents, and that at least four were arrested for driving under the influence. So far 41 people have been charged as a result of the ongoing investigation into corruption at the secretary of state's office.

The Dallas Morning News recently obtained information on the number of people who have been in INS detention for more than three years. The information shows that more than 800 people have been in INS custody for more than three years, 361 of whom are asylum seekers and others who have not been convicted of any criminal offense. The detainees are from 69 countries, with the vast majority, 588, from Cuba. Of these, about 160 have been in the US for more than ten years. About 10 percent of the long term detainees are from Cambodia, Laos and Vietnam. The US lacks deportation agreements with these four countries. The remaining detainee, however, come from countries that do have established diplomatic relationships with the US. The annual cost of detaining these people is over \$20 million. Later this year the Supreme Court will issue an opinion on the constitutionality of long-term detention.

A growing number of US schools are recruiting teachers from abroad to make up for an increasing teacher shortage. This month, schools from Pennsylvania and New Jersey made a recruiting trip to India in search of people to teach math and sciences. Last December, Houston schools obtained a commitment from 12 teachers from Moscow, in addition to the 100 teachers from the Philippines and Spain already employed by the district. New York City schools already employ a number of foreign teachers and are looking abroad to fill as many as 12,000 vacancies expected during the next school year.

For the time being, Jeffrey Davidow, the US Ambassador to Mexico, will remain in his position despite the change in administrations. Davidow is a career diplomat. He will not remain in the post throughout the Bush administration, however. The role of Ambassador to Mexico is seen as one of the most desirable in the Administration, and a number of people have

been listed as potential candidates. Among these are Texas State Railroad Commissioner Tony Garza and Rob Mosbacher, Jr., a Houston area energy magnate.

An ethics instructor with the INS in South Carolina was recently arrested on charges that she committed fraud against a local department store. According to investigators, Rosemary Slattery, whose husband William is a former associate INS commissioner, purchased items and then returned different, less expensive ones, pocketing the refund in addition to keeping the original purchased items.

Three Hispanic residents of Roger, Arkansas have filed suit against the local police department, saying that they have been illegally stopped because of their race. According to the complaint, officers stopped two of the plaintiffs and demanded to see their immigration papers. They also say their car was search without permission. The third plaintiff says a similar incident occurred to him. They say that the police have engaged in racial profiling, and that they have in mind the goal of turning Hispanics over to the INS.

A new report from the Urban Institute shows that 36 percent of the children of immigrant in Texas are living in poverty, the highest rate in any state. The report, which was based on numbers from the US Census Bureau, also shows that Texas has the highest rate of uninsured children at 40 percent. The study looked at California, Colorado, Florida, Massachusetts, New Jersey, New York, Texas and Washington, which are home to 71 percent of immigrants to the US. The author of the study, Randy Capps, says that there are two reasons for Texas' low ranking. First is the large volume of immigrants to the state. Second is the fact that Texas provides only limited social services. The report is available online at http://newfederalism.urban.org/html/series_b/b29/b29.html.

The Colorado American Civil Liberties Union has threatened to use to state over the refusal to issue marriage licenses to immigrants without Social Security numbers. While they deny that it was in response to this threat, attorneys for the Colorado State Association of County Clerks and Records have reversed their position on issuing marriage licenses to people without Social Security number. Some advocates believe that the

Colorado policy was driven by the desire to prevent undocumented immigrants from marrying US citizens or lawful residents.

As part of his ongoing effort to draw immigrants to the state to boost its declining population, Iowa Governor Tom Vilsack recently held a conference entitled “Immigration: Our Bridge to the Future.” He expressed surprise at the negative reaction to some of his immigration proposals, saying that he believes that they are necessary for the state and its economy. Vilsack was critical of the meat packing industry, saying that it “used people.”

US immigration officials have allowed about 170 workers from Vietnam to enter the US to provide evidence in an investigation into human trafficking in Samoa. The workers, most of whom are female, have been granted humanitarian parole and are allowed to remain in the US for 90 days. They were employed by the Daewoosa-Samoa Ltd. factory, which is now closed. Because Samoa is a US protectorate, clothing made there can be labeled “Made in the USA” but employers do not have to comply with US labor laws. According to a Department of Labor report released last year, Daewoosa paid workers less than the mandated minimum wage of \$2.60 an hour. The company was fined and eventually declared bankruptcy. The owner of the factory was arrested at the end of March.

12. THE ABC’S OF IMMIGRATION – V VISAS FOR SPOUSES AND MINOR CHILDREN OF PERMANENT RESIDENTS

The INS has provided its first guidance on the new V visa category. Only applications from people living abroad are currently being accepted. The INS will not begin accepting applications from people within the US until regulations are published, which is expected to be sometime in May.

The V visa is designed to reunite spouses and minor children of lawful permanent residents with their families while their visa applications are processed. The V visa allows the visa holder to be lawfully employed in the US, and to travel to and from the US. However, while people who have been unlawfully present in the US can obtain a V visa, their unlawful presence will still prevent them from adjusting status unless they obtain a waiver. Therefore, people with status violations may not want to travel abroad in order to prevent the reentry bars from taking effect.

To qualify for a V visa, the applicant must be the spouse or unmarried child under 21 of a permanent resident for whom an application for immigration was filed on or before December 21, 2000. The application for immigration must have been pending for three years at the time of the application for the V visa.

The State Department also recently announced the creation of a new supplement form to the OF-156 Nonimmigrant Visa Application that is intended for V visa applicants. The new form, the DS-3052 Nonimmigrant V Visa Application will soon be available on the State Department web site at <http://travel.state.gov>.

The National Visa Center recently began sending a letter to nearly 300,000 potential V Visa applicants. Receiving the letter is not necessary to process a V Visa, but the letters contain a form which potential applicants can send to consular posts which will establish eligibility and will prompt the posts to schedule appointments.

The letter will read as follows:

Begin Text of Letter

Dear Applicant:

According to our records, you have a visa petition on file as the spouse or child of a Legal Permanent Resident. Though the priority date for your petition has not been reached, the LIFE Immigration Family Equity Act created a new class of nonimmigrant visa that allows people in circumstances like yours to live and work legally in the United States while waiting for a visa number to become available.

You may have heard of this new nonimmigrant visa, called the "V" visa. The purpose of this letter is to inform you how you may apply for this visa. We have placed general information on the "V" visa on our website at <http://TRAVEL.STATE.GOV/V-VISA.HTML> . If you are in the United States, you may apply to change your current status (regardless of what that status might be) to the "V" visa status by contacting the U.S. Immigration and Naturalization Service. You should see their website:

<http://WWW.INS.GOV> .

If you are outside the United States, you must apply at selected U.S. embassies or consulates.

This letter and the enclosed worksheet are provided as a courtesy and not as an invitation to a specific interview. If you have already received an interview date for your immigrant visa, you will be processed as an immigrant and not receive a V visa. To begin the process at a consular section overseas, you must complete the "V" visa application worksheet (OF-156V). We have included one with this mailing, but it too can be completed and downloaded from our website:

<[HTTP://TRAVEL.STATE.GOV/V-VISA.HTM](http://TRAVEL.STATE.GOV/V-VISA.HTM)>. Once complete, send the worksheet to the consular section at the embassy or consulate where your immigrant visa was to be processed. Records show that your visa file has been assigned to the post below.

Name of post

Address

When consular personnel receive your information, they will send you further instructions concerning required documentation such as family records, a medical exam, and financial evidence. Many overseas posts have a website that describes their particular procedures. To find out if the post handling your case has its own website, go to

<[HTTP://TRAVEL.STATE.GOV](http://TRAVEL.STATE.GOV)> and click on the link that says, "U.S. Embassy and Consulate Websites Worldwide." When communicating with the consular office by telephone, letter, or e-mail, you must give your full name and case number as they appear below:

Applicant's name

Applicant's case number

INS receipt number

- end of letter -

13.ASK VISALAW.COM

By [Marc Topoleski](#), Partner in Siskind, Susser, Haas & Devine's Detroit-area Office

I am in the midst of the employment-based Green Card application process. Will it jeopardize my Green Card application if my spouse, who is working under a separate visa category, changes jobs while I am awaiting approval of my Green Card application?

No. Generally, while you need to remain with the petitioning employer during Green Card process, the fact that your spouse changes jobs to another employer will not impact your application. Obviously, your spouse will want to make sure he or she is authorized to work for the new employer under the terms of his or her visa category to avoid status issues that could arise when adjusting under your application.

What kind of evidence do I need to show that I was present in the US on December 21, 2000 so I can qualify for Section 245(i)?

The INS has given some guidance on this issue, but not as extensive as we would like. Under newly issued regulations, the INS has said copies of government (federal, state or local) issued documents demonstrating the applicant's presence in the US on or before December 21, 2000 can be used. Also, if the applicant does not have such a document, but believes that the INS may have a copy of it, the applicant can submit a statement to the INS outlining the information pertaining to the document.

The INS will also accept a document that was not issued by the government if it bears the applicant's name, is dated, and has the signature of the person who issued it. Affidavits claiming physical presence on December 21 will not be accepted without additional evidence to verify the claim. Such evidence could include cancelled checks, rent receipts, school records, utility bills, records of doctor visits, etc.

Only the primary applicant for adjustment of status has to meet the physical presence requirement. Dependent family members do not need to be able to prove that they were physically present in the US on December 21, 2000.

I am a green card holder and I just got laid off. Am I eligible for unemployment compensation?

The laws of the state in which you reside govern your eligibility for unemployment and these laws vary from state to state. Generally, most states require a person be legally able to accept employment in order to be eligible to receive unemployment benefits. Under this type of scheme,

individuals that hold visas with employment authorization that is not dependent on being employed with a specific employer might be able to collect unemployment benefits. This could include green card holders or persons with an EAD. However, individuals in a visa category where employment authorization is dependent on being employed with a particular employer or in a particular position might not be eligible because they would not be authorized to accept new employment. The best way to find out if you are eligible for unemployment benefits is to contact the unemployment agency in the state in which you live.

14.INS SENDS REPORT ON USE OF PAROLE TO CONGRESS

Since 1996, the INS has been required to issue annual reports on its use of parole to admit people into the US. Parole is not a formal grant of admission and only gives the parolee the right to be in the US temporarily. The most recent report was sent to Congress last week.

There are a number of different kinds of parole. The most often used is known as port-of-entry parole. It is granted within the discretion of an immigration inspector and allows short periods of entry. It is often used in emergency situations. Advance parole is granted to people with applications for adjustment of status pending with the INS. Deferred inspection is granted to entrants when it is determined that questions about their admissibility are better answered once they reach their final destination. Humanitarian parole is granted in medical emergencies and similar situations. Public interest parole is most often granted to aliens who are entering to participate in legal proceedings. Overseas parole is seldom used and allows for a longer period of entry than other forms of parole.

The report covers fiscal years 1997 and 1998 and is based on data collected from INS Form I-94. During 1997, 199,843 people were granted parole into the US, a number that rose to 237,414 in 1998. Most of those granted parole, 34 percent in both 1997 and 1998, were Mexicans, with Canadians and Cubans second and third respectively both years. The following chart shows the citizenship of the people most often granted parole in 1997 and 1998.

COUNTRY	1997	1998
All Countries	199,943	237,414
Mexico	68,045	81,512
Canada	15,392	16,576
Cuba	8,247	15,350

United Kingdom	8,187	10,203
China (PRC)	6,105	7,149
India	5,485	6,810
Former Soviet Union	5,364	6,134
Philippines	5,218	5,974
El Salvador	4,467	3,676
Germany	3,348	4,084
Korea	3,218	3,189
Japan	3,146	3,490
Colombia	3,098	3,501
Pakistan	2,733	3,269
Brazil	2,672	3,435

The use of port of entry parole is represented in the following chart.

COUNTRY	1997	1998
All Countries	151,385	171,413
Mexico	52,677	56,078
Canada	9,121	11,347
United Kingdom	7,013	8,971
China (PRC)	5,301	6,306
India	4,696	6,022
Philippines	4,593	5,356
El Salvador	2,981	2,551
Korea	2,819	2,788
Germany	2,758	3,474
Japan	2,742	3,067
Former Soviet Union	2,681	3,629
Colombia	2,539	2,766
Taiwan	2,376	2,434
Brazil	2,325	3,102
Cuba	2,236	980

The use of advance parole is represented in the following chart.

COUNTRY	1997	1998
All Countries	8,998	8,162
Mexico	3,571	1,723
Canada	1,885	1,972
United Kingdom	333	394
India	246	238

El Salvador	196	127
Pakistan	151	222
Germany	149	178
China (PRC)	132	207
Former Soviet Union	116	126
Philippines	109	151
Israel	108	93
France	100	117
Brazil	98	113
Japan	88	103
Colombia	71	211

The use of deferred inspection is represented in the following chart.

COUNTRY	1997	1998
All Countries	10,109	10,392
Mexico	2,000	1,920
Canada	795	840
United Kingdom	499	489
Colombia	313	355
Jamaica	304	371
Germany	296	261
Haiti	259	307
China (PRC)	256	252
Dominican Republic	252	329
Korea	250	171
Philippines	248	180
El Salvador	247	206
India	173	250
Former Soviet Union	169	125
Japan	156	128

The use of humanitarian parole is represented in the following chart.

COUNTRY	1997	1998
All Countries	16,773	24,897
Mexico	8,437	18,508
Canada	2,531	1,831
El Salvador	1,009	740
China (PRC)	327	241
Pakistan	312	140
India	303	210
United Kingdom	245	234
Guatemala	221	182

Philippines	194	206
Japan	119	123
Germany	116	118
Poland	112	49
Korea	106	106
Colombia	106	86
Bangladesh	106	46

The use of public interest parole is represented in the following chart.

COUNTRY	1997	1998
All Countries	3,593	5,173
Mexico	1,299	3,193
Canada	1,050	555
Haiti	128	13
United Kingdom	87	100
China (PRC)	75	111

The use of overseas parole is represented in the following chart.

COUNTRY	1997	1998
All Countries	8,989	17,377
Cuba	5,893	14,123
Former Soviet Union	2,398	2,254
Vietnam	448	534
Cambodia	30	87
Laos	27	4

During 1997, the most common type of parole issued was port-of-entry parole, accounting for 76 percent of all parole. In 1998, while the percentage declined to 72, port-of-entry parole remained the most common type. Advance parole accounted for 4.5 percent of paroles issued in 1997, falling to 3.4 percent in 1998. Deferred inspection accounted four five percent of paroles issued in 1997 and four percent in 1998. Humanitarian parole represented eight percent of those issued in 1997 and ten percent in 1998. Public interest parole accounted for only two percent of paroles issued in both 1997 and 1998. Overseas parole, which is generally issued to refugee applicants, accounted for 4.5 percent of paroles granted in 1997, and 7.3 percent in 1998.

15. ANOTHER KROME DETAINEE MAKES CHARGES OF SEXUAL ABUSE

Eddy Pierre Paul, a Haitian immigrant in detention pending his deportation, has accused an employee at the Krome Detention Center in Miami of pressuring him for sexual favors in exchange for securing his release. The charges come just more than three months after female detainees were removed from the facility following repeated accusations that guards were sexually abusing them.

According to Paul, a male computer analyst repeatedly pressured him, and he eventually acquiesced. He later reported the incident to a psychiatrist at the facility. The INS sent him to a local hospital for more extensive treatment and reported the allegation to the Justice Department, which is already investigating the earlier claims of abuse. The employee, who has not been identified, has been relocated.

Critics of conditions at Krome say that the latest allegation shows that the INS never took any steps to address the problems that plague the facility. According to Cheryl Little, the Director of the Florida Immigrant Advocacy Center, "Given INS' failure in the past to hold its people accountable when they break the law, it is not surprising to hear there are more problems at Krome."

16. SRI LANKAN SEEKS REFUGE IN CANADA AFTER FOUR YEARS OF DETENTION IN THE US

Ponnampalam Kailasapillai thought that he would be in Washington, D.C. just long enough to change planes. More than four years later, he finally finished his journey from Sri Lanka to Canada. Kailasapillai fled Sri Lanka in September 1996 to avoid the ongoing ethnic conflict. He wanted to join his brother, who had already been granted asylum in Canada.

His plane landed at Dulles International Airport in Washington, and when US immigration officials determined that the passport he was carrying was not his own, he was detained. Kailasapillai was faced with the choice of deportation back to Sri Lanka or applying for asylum in the US. He sought asylum. He said that he was a farmer who had been persecuted by both sides in the conflict between government forces and the Tamil minority. While the approval rate of asylum claims from Sri Lankans is among the highest, the Immigration Judge who heard Kailasapillai's case was one of the toughest. She found that the problems associated with living in a war zone do not constitute persecution. Later, the same Immigration Judge denied his application under the United Nations Convention Against Torture.

Last week he was finally released from detention with the INS saying that

he could go free so long as he went immediately to Canada. Upon his arrival in Canada, Canadian immigration officials interviewed Kailasapillai. He contrasted the treatment he received in the US and in Canada, saying that after he explained that journalists accompanied him because of his 54 months of detention in the US, the process went smoothly.

17. BILL INTRODUCED TO RESTORE DUE PROCESS TO IMMIGRATION LAW

Representative Barney Frank (D-MA) this week introduced a bill that would call for substantial reform to US deportation law. Sixteen co-sponsors joined Frank in making his announcement, including the Florida Republican Lincoln Diaz-Balart.

The bill, H.R. 1452, called the Family Reunification Act of 2001, would restore many of the laws dealing with deportation to their pre-1996 state, when immigration judges had a great deal more discretion in making decisions regarding deportation. Frank introduced similar legislation last year, which ended up with over 80 cosponsors. While there was never a vote on that bill, toward the end of the session the House of Representatives did approve a bill that would have done many of the same things. The Senate failed to act on that bill.

The bill would allow people who have lived in the US for seven years, at least five as a permanent resident, to apply for cancellation of removal. For purposes of cancellation, which is unavailable to people convicted of aggravated felonies, a crime would be considered an aggravated felony only if it resulted in at least five years in prison. The bill would authorize the INS to release people in deportation proceedings who have applied for cancellation if they demonstrate that they are not a flight risk and will not be a danger to the community.

A special kind of cancellation of removal would be created that would allow a person who would not ordinarily be eligible because of a criminal conviction to apply for cancellation because of humanitarian concerns.

The bill eliminates the stop time rule, which currently states that the time a person has spent in the US necessary for eligibility for cancellation terminates when they are placed in deportation proceedings. It also eliminates the retroactive application of the expanded grounds of deportation, so that people convicted of criminal offenses that were not aggravated felonies before the Illegal Immigration Reform and Immigrant Responsibility Act was passed cannot now be placed in proceedings as an aggravated felon. They would be allowed to apply for any relief from

removal for which they were eligible at the time of the offense.

Finally, the bill would allow people who become eligible for relief under it to reopen their cases, even if they have already been deported.

18. RECENT IMMIGRANTS DO NOT FARE AS WELL AS EARLIER ONES, REPORT INDICATES

A new report from the Center for Immigration Studies, a think-tank that advocates for reduced levels of immigration, says that immigrants who have arrived since the 1980s are less likely than previous immigrants to own their own home and become US citizens. The report blames this trend on the fact that recent immigrants do not have the educational attainment necessary to succeed in the economy.

Steven Camarota, the director of research at the Center, says the report shows that immigration policy should be shifted to favor educated immigrants, and eliminate the preferences given to family members. Others, however, say that comparing immigration today with immigration in the 1950s and 1960s is not fair because today immigration rates are determined in large part by per country quotas while in the past it was racially based and strongly favored Europeans. They say a more apt comparison would be with immigrants of the early twentieth century. Another source of criticism is that the report deals with both legal and undocumented immigrants.

Others add that with increased globalization, immigrants continue to feel strong ties with their native country, making citizenship and home ownership less relevant. Camarota responds to this criticism by noting that these factors indicate a person's ties to the US. He adds that the 18 million permanent residents of the US, who cannot vote, represent about 30 congressional districts.

The study examined the progress of immigrants 11 to 20 years after their arrival, so the status of immigrants of the 1950s would be examined in the 1970s, immigrants of the 1960s in the 1980s. According to Camarota, the long-term status of immigrants has declined since the 1970s. Three main criteria were used to determine immigrants' status - rates of home ownership, naturalization, and poverty.

By the 1970s, immigrants of the 1950s had a home ownership rate of 56.8 percent, close to the 63.4 percent rate of native-born Americans. By 2000, home ownership rates among immigrants of the 1980s had dropped substantially, to 45.5 percent, while the rate among native born Americans

had increased to 69.5 percent. Almost 64 percent of 1950s immigrants became citizens by the 1970s, while only 38.9 percent of 1980s immigrants were citizens in 2000. The poverty rate among 1950s immigrants during the 1970s was 25.7 percent, lower than the 35.1 percent among native-born Americans. By 2000, the poverty rate among 1980s immigrants was 41.4 percent, while among native-born Americans it was 28.8 percent.

The report, entitled “The Slowing Progress of Immigrants, An Examination of Income, Home Ownership, and Citizenship, 1970-2000,” is available online at <http://www.cis.org/articles/2001/back401.html>.

19. PRESSURE MOUNTS WITH PENDING EXPIRATION OF SECTION 245(i)

As undocumented immigrants around the country rush to find ways to qualify for adjustment of status under section 245(i) before it expires on April 30, many are vulnerable to unscrupulous “immigration consultants” who promise them perfect results and often take no action at all on their case. Many “consultants” have opened shop, with some charging as much as \$25 for forms that are freely available from the INS (or on our web site at www.visalaw.com/forms).

Section 245(i) allows people who are in the US who entered without authorization, have immigration status violations, or who have engaged in unauthorized employment to apply for immigration through a qualifying family member or employer. It was reinstated last December, and will expire at the end of this month. The provision is important because it allows people to go through the process of adjustment of status within the US, rather than returning home, which, because of the status violations, would result in a three of ten year bar from reentering the US.

Advocates have been working hard to inform people of the provisions of the law and to warn people to be aware of those who offer services without any intention of following through or who convince applicants that 245i is an amnesty. A particularly large concern is that not everyone who is undocumented is eligible under section 245(i), and if one files and is not eligible, it could lead to his or her deportation.
