

SISKIND'S IMMIGRATION BULLETIN

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1. OPENERS

Dear Readers:

I was pleasantly surprised to learn just before press time that Congress is moving on a very fast track to consider legislation to retroactively extend Section 245i of the Immigration and Nationality Act. Most readers are probably aware that 245i allows a large number of would be immigrants to pay a penalty fee in order to have their applications processed in the United States. The ability to process in the US is crucial to many people who face bars as long as ten years on re-entering the US if they are forced to process their green cards at consulates outside the US.

By our next issue, we may know what Congress is willing to do on this. The early word is that the extension will only be for four months. People who were married by the end of last month or had employment offers by that date are likely to be included. But efforts to make 245i permanent will no doubt continue. There are a number of other immigration bills that have been recently introduced which we review this week in our Legislative Update article.

This week, the State Department announced results of the DV-2002 lottery. The DV lottery is an annual program intended to increase the diversity of the US immigration pool. Only nationals of countries proportionately underrepresented in the immigrant population are allowed to participate. The requirements are few – submit a properly completed application during the annual one month entry period, be “chargeable” to an eligible country, have a high school degree or equivalent work experience, and otherwise be eligible to immigrate. A detailed description of the DV application rules are included on our site’s Visalaw.com Green Card Lottery Center at www.visalaw.com/lottery_page.html. We also include a report in this week’s newsletter on results of the most recent lottery drawing.

We also include this week many of our regular features. Among them is the monthly State Department Visa Bulletin. One interesting development this month is the dramatic jump in the Employment-based Other Worker category. The wait in that category has jumped from nearly eight years to around two years. For many years, employers have not bothered applying in this category because of the long waits. That combined with some recent changes in the law that allow extra visa slots to be shifted to the Other Workers category might explain the improvements.

In firm news, I spoke at an American Bar Association-sponsored continuing legal education program at Stetson University School of Law. The topic was “Integrating the Internet Into Your Law Practice”. I was attending the spring meeting of the ABA’s Law Practice Management

Section where I serve on the Governing Council as well as the Publishing Board. A number of readers of this newsletter are lawyers and I strongly encourage you to consider joining the ABA in general, and the Law Practice Management Section in particular. The section is the “go to” place for information on technology and management information for law firms. You can find information on LPM at www.abanet.org/lpm. By the way, in a few weeks, my speech will be webcast at the ABA’s elawyering.org web site.

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.

Thanks again for your continued loyalty.

Greg Siskind

2. LEGISLATIVE UPDATE

This week it was announced that the House of Representatives would vote on Monday, May 21 on H.R. 1242, which would extend the section 245(i) deadline for six months. The bill was introduced by Rep. Peter King (R-NY), and has bipartisan support. Debate on the bill will be limited because it is on a fast track, so we should know by Monday afternoon whether the deadline will be extended.

The following immigration bills were recently introduced in Congress:

[H.R. 1806](#), the Liberian Refugee Immigration Fairness Act of 2001, introduced by Rep. Patrick Kennedy (D-RI), would allow Liberian nationals in the US continuously since January 1, 2001 to apply for adjustment of status. Applicants would not be subject to the public charge ground of inadmissibility or those relating to status violations while in the US.

[H.R. 1807](#), the Immigrant Labor Policy Review Act, introduced by Rep. Jim Kolbe, (R-AZ), would establish a Commission on Immigrant Labor Policy. The Commission would focus on studying the relationship between

immigration policy and the labor market in the US. It would be required to submit reports on the effectiveness of current law in protecting the US workforce and in preventing the abuse of undocumented workers.

[H.R. 1840](#), introduced by Rep. Tom Davis (R-VA), would extend the application period for refugee status for unmarried adult children of Vietnamese refugees until 2003.

[S. 884](#), the Southwest Border Port-of-Entry Infrastructure Improvement Act, introduced by Sen. Pete Domenici (R-NM), calls for a study of the current infrastructure at ports-of-entry and would establish a fund for improvements and technological developments.

[S. 799](#), the Reasonable Search Standards Act, introduced by Sen. Richard Durbin (D-IL), would prohibit the use of racial and other discriminatory profiling by the US Customs Service. The law would address the concern that non-whites are singled out for inspection upon entry to the US by requiring Customs officials to have specific information of suspected wrongdoing before conducting a search.

[S. 862](#), the State Criminal Alien Assistance Program Reauthorization Act of 2001, introduced by Sen. Dianne Feinstein (D-CA), would provide \$750 million a year from 2002 to 2006 to state and local governments to cover the costs associated with prosecuting and jailing undocumented immigrants.

[S. 864](#), the Anti-Atrocity Alien Deportation Act of 2001, introduced by Sen. Patrick Leahy (D-VT) would create a ground of inadmissibility based on commission of torture, extrajudicial killing and violations of religious freedom. It would also create an office within the Justice Department dedicated to the removal of such people from the US.

[S. 887](#), the Torture Victims Relief Act of 2001, introduced by Sen. Paul Wellstone (D-MN), would provide \$75 million in funding for torture victims over the next three years.

The US Senate last week approved an amendment to President Bush's proposed education budget that provides substantial increases in bilingual education funding. By a 62 to 34 vote, the Senate approved quadrupling funding from \$750 million in 2002 to \$2.8 billion in 2008. The House must also approve the increase. The amendment came on the heels of criticism

of the Bush education budget for its treatment of bilingual and immigrant education programs and for freezing spending at 2001 levels.

3. HOUSE IMMIGRATION SUBCOMMITTEE HEARING ON THE INS

This week the House Immigration Subcommittee held a hearing on the state of the INS. Acting Commissioner Kevin Rooney attempted to deflect criticism of the agency, arguing that while it has problems delivering service, it is taking steps in the right direction. He pointed to the significant improvement in naturalization processing times, down from an average of almost two years to about six months now. Rooney also spoke of the improvements that are being made in the INS detention system.

Rooney's comments, however, did not assuage the concerns of critics of the agency, including Rep. Sheila Jackson-Lee (D-TX), who called for training Border Patrol agents in human rights and for alternatives to the current detention system. On any given day there are more than 20,000 people in INS detention.

Another witness, Roy Beck, the Executive Director of NumbersUSA, a group that advocates restricting immigration, spoke about the frustration many feel because they do not see the INS making real efforts to prevent undocumented immigration. He called for increased interior enforcement, as well as more resources for border enforcement.

Also giving testimony at the hearing were Peggy Philbin, the Acting Director of the Executive Office for Immigration Review and Bishop Thomas Wenski from the National Conference of Catholic Bishops.

Statements from the witnesses are available online at http://www.house.gov/judiciary/claims_witness_051501.htm.

4. MEXICAN GOVERNMENT TO DISTRIBUTE BORDER SURVIVAL KITS

Beginning next month, the Mexican government will distribute border survival kits to people planning on crossing the US-Mexico border without authorization. The kits will contain information on what the migrants can expect, as well as medicines and food. As part of the program, the government will also train volunteers in the treatment of minor injuries.

Critics of the program say that it will encourage undocumented immigration. Others, however, accept that people will continue to seek

employment in the US even without permission, and believe that any effort to protect them should be taken. Last year, according to the Mexican government, at least 490 Mexicans died while crossing the border. So far this year, the death rate is about one a day, but the number always rises during the hot summer months.

The US Border Patrol supports the effort. For some years now, Border Patrol agents have carried supplies to treat ailing and injured migrants, and have been receiving instruction in emergency medical treatment. While migrants make every effort to avoid agents, in many cases agents are the only thing standing between the migrants and death in the desert.

The new program was created by the Office for Mexicans Abroad, a newly formed office in the Mexican government. It reflects the larger shift in the attitude of the Mexican government to Mexican migrants, and toward immigration in general. Under President Vicente Fox, the Mexican government has begun reaching out to Mexicans living in the US. There is also less concern within the Mexican government about the US's reaction to its immigration policy.

5. CENSUS DATA SHOWS MANY IMMIGRANTS DURING 1990S UNDER AGE TWENTY

According to recently released Census data analyzed by the Boston Globe, almost 40 percent of immigrants to the US over the past decade were between the ages of 10 and 19. The approximately 11 million immigrants over age 10 who came to the US during the 1990s represent about one-third of the country's increase in population during that time. This is a major demographic trend with important implications for almost every aspect of society.

Perhaps one of the most striking statistics from the Census is that one in eight US residents between 10 and 19 is foreign-born, a total of nearly four million children. While the Census Bureau has not released data on children under age 10, demographers expect that there will be similar numbers and proportions of foreign-born children in that age group.

This trend will call for the construction of more schools, and may force schools to change the way in which they provide for the education of non-native English speakers even as efforts to end bi-lingual education programs gather force. It will likely also prove to be a boon to older US cities where populations have been declining or only holding steady in recent decades.

The largest group of adult immigrants is also very youthful, between age 25 and 34. As the native born US population ages, foreign born workers will become more important to the US economy, not just in filling jobs, but in making contributions to the Social Security System that will be necessary to provide benefits

6. 2002 DIVERSITY VISA LOTTERY RESULTS AVAILABLE

The results of the 2002 Diversity Visa Lottery were made available in the June 2001 Department of State Visa Bulletin. Of the roughly 10 million applications received, about 90,000 were chosen for further processing. There are 50,000 visas available under the program. According to the State Department, there were another three million applications that were rejected for failure to properly follow instructions.

A larger pool of potential applicants is selected because invariably some of the selected applicants do not qualify for the visa. To qualify, the applicant must have a high school diploma or its equivalent, or have two years of experience in a job that requires at least two years of training or experience.

People who were not selected for further processing are not contacted by the State Department, and can now know that they were not selected for processing.

A list of the countries and the number of applicants from each country selected follows:

REGION - AFRICA	NUMBER
Country	
Algeria	1,163
Angola	15
Benin	70
Botswana	12
Burkina Faso	14
Burundi	0
Cameroon	775
Cape Verde	12
Central African Rep.	2
Chad	19
Comoros	0
Congo	76

Congo, Dem. Rep.	405
Cote D'Ivoire	163
Djibouti	10
Egypt	2,046
Equatorial Guinea	0
Eritrea	246
Ethiopia	4,997
Gabon	18
Gambia, The	63
Ghana	6,531
Guinea	274
Guinea-Bissau	2
Kenya	2,408
Lesotho	0
Liberia	1,117
Libya	26
Madagascar	3
Malawi	27
Mali	43
Mauritania	43
Mauritius	15
Morocco	2,956
Mozambique	8
Namibia	3
Niger	45
Nigeria	6,049
Rwanda	22
Sao Tome & Principe	0
Senegal	379
Seychelles	2
Sierra Leone	5,767
Somalia	1,328
South Africa	452
Sudan	1,820
Swaziland	5
Tanzania	269
Togo	786
Tunisia	151
Uganda	192
Zambia	91
Zimbabwe	121
REGION – ASIA	NUMBER
Afghanistan	208

Bahrain	3
Bangladesh	5,497
Bhutan	4
Brunei	0
Burma	930
Cambodia	267
Hong Kong SAR	205
Indonesia	537
Iran	1,703
IRAQ	117
Israel	199
Japan	637
Jordan	123
Kuwait	39
Laos	6
Lebanon	118
Malaysia	131
Maldives	0
Mongolia	69
Nepal	729
North Korea	0
Oman	6
Qatar	4
Saudi Arabia	50
Singapore	62
Sri Lanka	757
Syria	67
Thailand	363
United Arab Emirates	22
Yemen	223
REGION – EUROPE	NUMBER
Albania	2,331
Andorra	0
Armenia	843
Austria	56
Azerbaijan	267
Belarus	775
Belgium	30
Bosnia & Herzegovina	49
Bulgaria	2,489
Croatia	43
Cyprus	16

Czech Republic	116
Denmark	26
Estonia	61
Finland	19
France	207
Guadeloupe	1
Georgia	273
Germany	1,090
Greece	44
Hungary	101
Iceland	9
Ireland	135
Italy	95
Kazakhstan	656
Kyrgyzstan	133
Latvia	156
Liechtenstein	0
Lithuania	1,483
Luxembourg	2
Macedonia, FYR	157
Malta	2
Moldova	461
Monaco	0
Netherlands	52
Netherlands Antilles	5
Northern Ireland	11
Norway	11
Poland	4,707
Portugal	17
Romania	1,357
Russia	2,754
San Marino	0
Slovakia	275
Slovenia	5
Spain	38
Sweden	54
Switzerland	105
Tajikistan	107
Turkey	1,153
Turkmenistan	43
Ukraine	5,511
Uzbekistan	1,497
Vatican City	0
Yugoslavia	175

REGION – NORTH AMERICA	NUMBER
Bahamas, The	15
REGION – OCEANIA	NUMBER
Bahamas, The	15
Australia	220
Fiji	820
Kiribati	0
Marshall Islands	0
Micronesia, Fed. States	0
Nauru	0
New Zealand	138
Cook Islands	3
Palau	0
Papua New Guinea	
Samoa	1
Solomon Islands	0
Tonga	37
Tuvalu	0
Vanuatu	0
REGION – SO. & CEN. AMERICA, CARIBBEAN	NUMBER
Antigua and Barbuda	2
Argentina	198
Barbados	2
Belize	0
Bolivia	79
Brazil	237
Chile	41
Costa Rica	8
Cuba	757
Dominica	6
Ecuador	432
Grenada	4
Guatemala	20
Guyana	32
Honduras	12
Nicaragua	6
Panama	6
Paraguay	1
Peru	1,181

Saint Kitts and Nevis	2
Saint Lucia	3
St. Vincent and the Grenedines	2
Suriname	2
Trinidad and Tobago	69
Uruguay	17
Venezuela	153

7. STATE DEPARTMENT VISA BULLETIN – JUNE 2001

FAMILY NUMBERS

Family	All Chargeability Areas Except Those Listed	China	India	Mexico	Philippines
1st	01MAR99	01MAR99	01MAR99	22APR94	22MAY88
2A*	22SEP96	22SEP96	22SEP96	22OCT94	22SEP96
2B	22JUN93	22JUN93	22JUN93	22OCT91	22JUN93
3rd	08MAY96	08MAY96	08MAY96	15JUL95	22NOV87
4th	08OCT89	08OCT89	01APR88	08OCT89	08AUG1979

EMPLOYMENT NUMBERS

Employment-Based	All Chargeability Areas Except Those Listed	CHINA-Mainland born	INDIA	MEXICO	PHILIPPINES
1st	c	c	c	c	c
2nd	c	c	c	c	c
3rd	c	01AUG00	01JAN99	c	c
Other	01MAY99	01MAY99	01MAY99	01MAY99	01MAY99

Workers					
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 JUNE

Region	All DV Chargeability Areas Except Those Listed Separately	
Africa	AF 19,930	Except: Ethiopia AF 16,800
Asia	AS 10,520	
Europe	EU 20,000	Except: Albania EU 12,275
North America (Bahamas)	NA 15	
Oceania	OC 845	
SOUTH AMERICA, CENTRAL AMERICA, and the CARIBBEAN	SA 1,600	

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

Region	All DV Chargeability Areas Except Those Listed Separately	
Africa	AF 24,700	Except: Ethiopia AF 19,700
Asia	AS 12,000	
Europe	EU 24,000	Except: Albania EU 13,000

North America (Bahamas)	NA 15	
Oceania	OC 900	
SOUTH AMERICA, CENTRAL AMERICA, and the CARIBBEAN	SA 1,740	

The Third Preference Employment category, Other Workers, subdivision, experienced a substantial movement in visa numbers this month. The reasons for this are not completely clear, but it is possible that one reason for it is the spill down provision for employment based visas enacted last year.

The State Department has also warned of retrogression in priority dates of a number of family based immigration categories. It says that the annual limits on immigration are rapidly being approached, and that heavy demand, especially in adjustment of status cases filed in the US, could mean that 2001 cut off dates are reached in July or August.

8. BORDER NEWS

An immigration inspector recently pled guilty to taking about \$90,000 in bribes to allow drugs and undocumented immigrants to enter the US. Jose Antonio Olvera told the judge that he accepted the bribes only after smugglers threatened to kidnap his son, but his attorney prevented him from saying more until he is sentenced later this year. Along with the bribery charge, Olvera also pled guilty to tax evasion and conspiracy to import two tons of marijuana. As part of the plea agreement, Olvera faces no more than eight years in prison.

According to Mexican officials, the US deported 47,219 Mexican citizens during the first four months of 2001. This is a ten percent increase from 2000.

Police in Cadiz, Kentucky have apprehended 68 undocumented immigrants this year, including 16 following a recent investigation of a suspected robbery at a local hotel. Two people, one undocumented immigrant and one US citizen, were arrested on charges of immigrant smuggling. The

smuggled immigrants will be questioned to see if their testimony is needed at trial.

A Mexican national who was driving a van transporting undocumented immigrants that crashed in Colorado in early 2000 was sentenced to ten years in prison this week. The van rolled while going more than 90 miles an hour, throwing the 18 passengers from the vehicle. Two people died on the scene, and another died a day later.

Prosecutors in Arizona have agreed to reopen an investigation into the fatal shooting of an undocumented immigrant by a Border Patrol agent last March. The decision came after a meeting with representatives from the Mexican Consulate in Tucson. Three weeks ago the investigation had been closed after it was determined that the agent did not have criminal intent. The agent admits the shooting, but says his gun went off by accident during a struggle.

Border Patrol agents near Douglas, Arizona apprehended 122 undocumented immigrants last weekend. Earlier this month a group of 100 immigrants was detained in the same area. According to the immigrants, they were brought to the border in a tractor-trailer rig and then crossed on foot.

9. NEWS FROM THE COURTS

Alvarado-Carillo v. INS, Second Circuit

In this case, the court reversed the Board of Immigration Appeals denial of an asylum application and remanded the case for further proceedings.

Cosme Alvarado-Carillo, a native of Guatemala, entered the US in 1993. He was placed in deportation proceedings and applied for asylum, claiming to have been persecuted in Guatemala. Shortly before the first hearing, he became unable to continue to pay his attorney and obtained new counsel from a non-profit organization. His new lawyer realized that the application was a significant mistranslation of Alvarado-Carillo's story, and supplemented the record with an affidavit that provided a more accurate version.

Alvarado-Carillo claimed to have been persecuted in Guatemala from 1984 until he left. In 1984 he joined and helped lead a union. He was detained by the government and placed under house arrest, fired from jobs and threatened. Twice he was called to present himself at the Presidential Palace. During the second of these interviews he was told he should leave the country because he would die of hunger there. People who were called to the Presidential Palace for a third time were often killed or “disappeared.” Shortly after his second visit, Alvarado-Carillo fled Guatemala.

During the hearing the INS attorney focused on the dates of events provided in Alvarado-Carillo’s affidavit. It became clear to the Immigration Judge that the translator was not accurately translating Alvarado-Carillo’s responses and told the translator to be more accurate. Despite this, after the hearing the IJ denied the application, finding that Alvarado-Carillo was not a credible witness, in part because he could not remember what had happened on certain dates. The Board of Immigration Appeals rejected the adverse credibility determination, but affirmed the denial of asylum on the merits. Alvarado-Carillo appealed.

The Second Circuit found there were three significant errors in the Board’s opinion. First, the Board stated that Alvarado-Carillo claimed his persecution was the result of his union activities, and found that it was unreasonable to believe that he would be persecuted 10 years afterward for this activity. However, Alvarado-Carillo provided two other reasons for his persecution – his employment by a university whose faculty and students had been targeted by the military, and his friendship with a guerrilla leader.

Second, the Board found three inconsistencies between Alvarado-Carillo’s testimony at the hearing and his affidavit dealing the dates of various events. The Second Circuit found that the discrepancy was not as serious as the Board believed, and focused on the period of Alvarado-Carillo’s union activity, which the court already found the Board had improperly evaluated.

Third, the Board found Alvarado-Carillo’s testimony about his union activities to be vague, and that this vagueness, given the importance the Board attached to his union activities, undermined his claim. The Second Circuit, examining Alvarado-Carillo’s testimony, found that the evidence did not support the Board’s claim of vagueness.

Finally, the Second Circuit also found that the Board improperly applied rules regarding corroboration of claims with documentary evidence. It found that he failed to explain the lack of corroboration. Alvarado-Carillo did provide much evidence on conditions in Guatemala, as well as

newspaper articles on the murder of the guerrilla leader with whom he was friends and on the treatment of students and faculty at the university where he worked.

Because courts generally defer to the Board, instead of granting asylum the Second Circuit remanded to the Board for another hearing, reminding “the BIA that the mere existence of inconsistencies in the record should not automatically be deemed fatal to an applicant’s claim.”

The opinion is available online at <http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=2nd&navby=case&no=984305>.

In re Patino, Board of Immigration Appeals

In this case, the Board ruled that Immigration Judges have jurisdiction over motions to reopen even when there has been a waiver of the right to appeal.

On October 19, 1998, the INS granted Juana Claudia Patino voluntary departure from the US, with an alternate order of deportation if she did not leave in the allowed time frame. According to the record, both Patino and the INS agreed to not appeal the decision. On November 18, 1999, Patino filed a motion to reopen her case, challenged the validity of her waiver of her right to appeal. The motion was denied by the Immigration Judge on the ground that he lacked jurisdiction, and Patino appealed to the Board. Before the Board she argued that her waiver of the right to appeal should not be accepted because she did not receive effective assistance of counsel during her deportation hearing. The INS argued that the Board did not have jurisdiction.

The Board found that there were two ways in which a person can attack the validity of a waiver of the right to appeal, either by filing a motion to reopen with an Immigration Judge, or by filing an appeal directly with the Board. While a valid waiver of the right to appeal does eliminate the Board’s jurisdiction, the Board found it retained jurisdiction to determine whether the waiver was valid. However, because the Immigration Judge erroneously concluded that he did not have jurisdiction over the motion to reopen, the Board remanded the case with instructions to hear that motion.

The opinion is available online at <http://www.usdoj.gov/eoir/efoia/bia/Decisions/Revdec/pdfDEC/3448.pdf>.

In re Torres-Varela, Board of Immigration Appeals

In this case, the Board ruled that an aggravated DUI conviction based on the past commission of similar offenses was not a crime involving moral turpitude.

In February 2000, an Immigration Judge found Fernando Alfonso Torres-Varela to be removable from the US because of an aggravated felony conviction, but granted his application for a waiver of deportation and for adjustment of status. The INS appealed.

Torres was placed in deportation proceedings because of a number of DUI convictions in the Arizona courts, including one aggravated DUI. The INS alleged that the aggravated DUI was a crime of violence and thus an aggravated felony. It also argued that the offense was a crime involving moral turpitude. The Immigration Judge did find that it was an aggravated felony, but that it was not a crime involving moral turpitude. On appeal, the aggravated felony issue was not raised because at issue was Torres' adjustment of status. While an aggravated felony renders one removable from the US, it is not a ground of inadmissibility. Crimes involving moral turpitude are grounds of inadmissibility.

The INS based its position on a 1999 Board of Immigration Appeals decision in which it found that an Arizona aggravated DUI conviction was a crime involving moral turpitude. The provision of law in that case made it an aggravated DUI to drive under the influence with a revoked or suspended license. The aggravated DUI provision under which Torres was convicted dealt with repeat offenses. The INS argued that despite this difference, Torres' aggravated DUI was also a crime involving moral turpitude. Torres argued that because his aggravated DUI conviction was based on it being a repeat offense, it remained a "simple" DUI and not a crime involving moral turpitude.

Although the concept is widely used, there is no definition for a crime involving moral turpitude. Past cases demonstrate that while an evil intent will often make an offense a crime involving moral turpitude, it is not necessary to such a finding. Whether an offense is a crime involving moral turpitude is determined by closely examining the criminal statute at issue. The conduct described by the statute, not the conduct that resulted in the conviction determines whether the offense is a crime involving moral turpitude

The Board addressed the case on which the INS relied in arguing that Torres' offense was a crime involving moral turpitude, and found that it was easily distinguished because it required the defendant to drive under the influence knowing that they were not authorized to drive at all. In that

case, the Board also specifically noted that a simple DUI was not a crime involving moral turpitude.

The Board found that all of Torres' convictions were for simple DUIs, with the aggravated DUI being the result of multiple convictions. It further found that simply aggregating DUI offenses could not convert a simple DUI that was not a crime involving moral turpitude into a crime involving moral turpitude. It therefore upheld the ruling of the Immigration Judge.

The opinion is available online at <http://www.usdoj.gov/eoir/efoia/bia/Decisions/Revdec/pdfDEC/3449.pdf>.

In re Artigas, Board of Immigration Appeals

In this case, the Board upheld the authority of Immigration Judges to grant adjustment of status under the Cuban Adjustment Act to arriving aliens in deportation proceedings.

Ada Rosa Artigas, a Cuban citizen, was placed in deportation proceedings after her entry to the US in 1998. She admitted that she was deportable, but sought adjustment of status under the Cuban Adjustment Act (CAA), which the Immigration Judge granted. The INS appealed, arguing that an IJ does not have the authority to grant adjustment of status under the CAA.

Whether the IJ has such authority depends on regulations that were passed in 1997. The regulations generally give IJs authority to grant applications for adjustment of status to people in deportation proceedings. The regulations also specifically refer to adjustment of status under the CAA. The INS argued that despite this, IJs do not have the authority to grant adjustment of status to "arriving aliens," those who are placed in deportation proceedings immediately upon their arrival in the US. It pointed to another regulation dealing with applications for adjustment of status that provided that "after an alien, other than an arriving alien, is in deportation or removal proceedings, his or her application for adjustment of status [under the CAA] shall be made and considered only in those proceedings. An arriving alien, other than an alien in removal proceedings, shall apply to the district director having jurisdiction over his or her place of arrival."

The INS argued that because the regulations did not specifically say that arriving aliens in deportation proceedings can apply for adjustment of status before an IJ, they can apply only directly to the INS. The Board disagreed. It found no basis for the INS's position in the regulations, and noted that its position was contrary to the favorable treatment Cubans

receive under US immigration law. Therefore, it upheld the IJ's decision.

The opinion is available online at

<http://www.usdoj.gov/eoir/efoia/bia/Decisions/Revdec/pdfDEC/3450.pdf>

10. GOVERNMENT PROCESSING TIMES

California Service Center Processing Times

Jurisdiction: Arizona, California, Hawaii and Nevada.

(Just In Time Report)
05/11/01

Petition Type	Case Date	Data Entry
I-90	01-106	02/15/01
I-102	00-121	03/20/00
I-129 L	01-152	04/07/01
I-129 H1B COS/CN	01-131	03/15/01
I-129 H1 EOS	01-127	03/11/01
I-129 H2/H3	01-173	05/02/01
I-129 E	01-145	03/30/01
I-129 O/P/Q	01-143	03/28/01
I-129 R	01-099	02/08/01
I-129 F	01-160	04/17/01
I-130 (IR) Spouse	01-171	04/30/01
I-130 (IR) M/C	01-121	03/05/01
I-130 (IR) Other	00-257	09/07/00
I-130 Pref. Spouse	98-077	01/22/98****
I-130 Pref. M/C	99-057	01/04/99****
I-130 Pref. Other	98-060	12/26/97****
I-131	01-141	03/26/01
I-140 A& B, E-1 – E-2	01-110	02/21/01
I-140 C E1-3	01-098	02/07/01
I-140 D E2-1	01-107	02/16/01
I-140 E E-3	01-117	02/28/01
I-140 G EW – 3	01-154	04/10/01

I-360 FPL/Widows/Widowers	01-110	02/21/01
I-360 BPL/Religious	01-110	02/21/01
I-526	01-117	02/28/01
I-539	00-224	07/28/00
I-485 Ready to Adjudicate	01-060	12/20/00***
I-751	00-196	04/13/00
I-765 30 day	01-167	04/26/01**
I-765 90 day	01-143	03/28/01**
I-817(initial)	00-083	01/27/00
I-817 (extensions)	99-093	02/16/99
I-824 DIVI	01-125	04/05/01
I-824 DIVII	01-149	04/04/01
I-824 DIVIII	98-250	09/23/98
I-829	99-078	12/16/98
<p>"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.</p>		

Source: [American Immigration Lawyers Association](#)

11.NEWS BYTES

The INS, the Department of Labor and the American Immigration Lawyers Association have reached an agreement to consider the date an H-1B application's Labor Condition Application is signed to be the start date of the LCA for purposes of determining when an H-1B extension will be dated. Recently, the DOL had been approving LCAs from the date processed, often many weeks after the date of actual submission.

Sometime this month, the INS is to publish regulations to implement the legalization provisions of the Legal Immigrant Family Equity Act. These provisions will allow applicants for one of three class action lawsuits

related to the 1986 amnesty to apply for adjustment of status. Applicants will have one year from the publication of the regulations to apply for adjustment of status. Regulations to implement the new V visa, also created by the LIFE Act, are also expected to be published this month.

Testimony has been going on for the past two weeks in the retrial of a number of people on charges of immigration and marriage fraud. David Jewell Jones, an Arkansas businessman, along with four others are accused of conspiring to bring two Chinese women to the US for sexual purposes. Last week Xiao Ying Wu, one of the women, testified that she participated in a sham marriage. She testified that she saw the man she married, one of the defendants, only on the day they were married and on the day of their INS interview. While married, she said she was involved in a sexual relationship with Jones.

Last week we reported on the calls to extend the section 245(i) deadline by both President Bush and a growing number of members of Congress. INS Acting Commissioner Kevin Rooney also wants the deadline extended. Testifying before a House subcommittee on funding, he said as many as 200,000 eligible immigrants did not apply. Rooney pointed out that one reason for the last minute rush was delay in issuing regulations, which shortened the application period.

The state of California has filed a lawsuit against Hermandad Mexicana Nacional, a Hispanic advocacy organization, accusing it of misusing state funds. According to the state, the group cannot account for \$7 million in state funding for educational programs. Along with the \$7 million, the state is also seeking \$10 million in punitive damages. Some observers believe that the state has filed the suit in an effort to deflect criticism that has resulted from a federal investigation into the state Education Department.

The Hmong American Community, a non-profit community organization in California's Central Valley, is leading the development of a truck farmer school near Fresno. The Small Farm Resource and Training Center is looking for students who are recent immigrants, tenant farmers, and farm workers who want to go into business for themselves. Students can remain at the center for up to three years, receiving information on farming, especially the business aspects.

At a recent conference on border trade between the US and Mexico, Sen. Phil Gramm (R-TX) and Rep. Silvestre Reyes (D-TX) both expressed support for a new guest worker program, but with vastly different visions of the form such a program would take. Reyes supports a program that would allow the workers to eventually seek US citizenship, while Gramm supports a program that, while it would legalize the status of undocumented workers in the US, would not allow them to obtain permanent residence in the US. Gramm made clear the depth of opposition to the program supported by Reyes, saying "it will pass over my cold, dead political body." A guest worker proposal is being worked out in a series of meetings between US and Mexican officials, and is expected to be announced this fall.

A new poll suggests that Americans are concerned about the relatively high rate of population growth in the US, and that for many, these concerns are heightened by the increasing diversity of the US population. The poll, conducted by the Pew Research Center for the People and the Press, shows that half of the respondents believe the current population growth rate is a bad thing. The results of the poll are available online at <http://www.people-press.org/cen01rpt.htm>.

The jail in Bergen County, New Jersey recently signed a contract with the INS to provide temporary housing to immigrants who are in the process of being deported. Under the agreement, the jail will house up to 64 people at a time. From the New Jersey jail, the detainees will be moved to a jail in Louisiana, and from there will be deported. County officials hope the agreement with the INS will boost falling revenues.

A former employee of the city of Laredo, Texas, was recently sentenced to three years of probation for creating and distributing fraudulent documents while working at the Bureau of Vital Statistics. Jesus Armando Cazares was also sentenced to four months in a halfway house and four months of home detention after being convicted on three counts of document fraud.

The Inter-American Development Bank this week made several proposals

on ways to channel money sent home by Central American immigrants in the US into investments in their hometowns. The Bank estimates that about \$300 billion will be sent home by immigrants over the next ten years. It wants to channel \$20 billion of this into infrastructure.

The INS office in Cleveland, Ohio, recently agreed to terminate removal proceedings against four people who had filed applications for labor certifications under section 245(i). It seems that a person within the Ohio department of labor reported the four to the INS, which then placed them in removal proceedings. Their attorney sued to terminate the proceedings, which the INS agreed to, under the policy memo issued at the end of April stating that the INS would not deport people on the basis of a section 245(i) filing.

12. THE ABC'S OF IMMIGRATION – NATURALIZATION – RESIDENCY REQUIREMENTS, PART I

While there are a number of substantive requirements for naturalization, the most complex of these is residence in the US. As a general rule, an applicant for naturalization must have been a permanent resident of the US for at least five years and also meet certain requirements dealing with the time actually physically spent in the US.

During the five years immediately preceding the application, the person must have resided in the US, with half of that time physically spent in the US. During the three months preceding the application, the person must have resided in the INS district where the application will be filed. Between the filing of the naturalization application and the granting of citizenship, the applicant must continue to reside in the US. Residence is defined as a person's place of general abode. In other words, the place a person makes "their principle, actual dwelling place in fact, without regard to intent."

Simply being absent from the US during these periods does not terminate the period of physical presence. However, absences of between six months and one year need to be dealt with carefully. They are presumed to break the period of continuous residence, but this presumption can be overcome by demonstrating that the applicant did not abandon their US residence. Evidence that can be used in this regard includes continuing US employment, family in the US, maintaining a home in the US, and not obtaining employment abroad.

Absences of more than one year will terminate continuous residence

unless the applicant complies with the following requirements. First, the applicant must have been physically present in the US for one continuous year following admission as a permanent resident. Any absence from the US, however brief, is not allowed during this period. Second, the applicant must be employed by one of the following:

- The US government
- A US research institution recognized by the Attorney General
- A US business engaged in the development of foreign trade and commerce
- A public international organization of which the US is a member

Before the one-year period outside the US is up, the applicant must demonstrate that they are employed by one of the organizations listed above. The applicant must then prove again that their absence from the US was because of employment. Even when these requirements are met, it is important to remember that the requirement that half of the five years prior to filing the naturalization application be spent in the US still applies. The only exception to this requirement is for time outside of the US during which a person is considered to be “constructively present” in the US. The most common example of this is overseas military service.

If an applicant is the spouse of a U.S. citizen who is one of the following:

- A member of the U.S. Armed Forces;
- An employee or an individual under contract to the U.S. Government;
- An employee of an American institution of research recognized by the Attorney General;
- An employee of an American-owned firm or corporation engaged in the development of foreign trade and commerce for the United States;
- An employee of a public international organization of which the United States is a member by law or treaty; or
- A person who performs ministerial or priestly functions for a religious denomination or an interdenominational organization with a valid presence in the United States

AND

Your citizen spouse is working overseas for at least 1 year according to an employment contract or order, then the residency requirements are actually waived.

There are also special exceptions to the residence requirement for religious workers. They must be engaged in religious work abroad and must meet the following requirements. First, at any time between admission as a permanent resident and filing the application for naturalization, they must spend one uninterrupted year physically in the US. This period may be before or after the religious work abroad. Second, the applicant must demonstrate that their absence was to perform religious work.

After filing the naturalization application, the applicant must continue to reside in the US, but absences are allowed.

13.ASK VISALAW.COM

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

After I get my EAD (based on filing of I-485), am I authorized to have more than one job?

Yes. A person can have as many jobs as they choose on the EAD. A person could also open a company and work for that company on an EAD. Note, however, that if the adjustment application is based on your working full-time for a particular employer, you need to continue working for that employer on a full-time basis.

When applying for adjustment of status (I-485), what does it mean if the INS responds to my filing with a "Transfer Notice?"

A "transfer notice" could be issued for a couple of reasons. It could mean the INS has decided to transfer the case to the local INS office for an interview to be scheduled in the future. Alternatively, it could mean that the INS is transferring your case to another Service Center that they believe has proper jurisdiction over the case based on information included with your filing.

What happens if a person with a green card stays outside of the US for more than 5 years?

While there is no set number of days a green card holder needs to be in the US to be considered to be maintaining permanent residency, being gone from the US for an extended period can cause problems. You might find the

article on our web site at <http://www.visalaw.com/99oct/20oct99.html> helpful.

14. FORMER INS DETENTION GUARD PLEADS GUILTY TO SEXUAL OFFENSE

Lemar Smith, a former INS detention officer, last week agreed to a plea bargain that allows him to avoid rape charges. Smith, who worked at the Krome Detention Center in Miami, was accused of raping a transsexual detainee, and pled guilty to having sex with the detainee. Along with up to two years in prison, Smith also faces possible disciplinary action from the INS.

Immigration advocates are not pleased with the deal. Cheryl Little, the executive director of the Florida Immigrant Advocacy Center, who has long been critical of conditions at Krome, noted that "If this crime had been committed by an immigrant who wasn't a U.S. citizen, INS would have already deported them." She is also concerned that the plea bargain says to detention officers that they can abuse detainees without fear of serious repercussions.

Smith's case was one of the most prominent and shocking of those resulting from federal investigation into corruption at Krome. A fleet dispatcher at Krome pled guilty to taking a \$1,000 bribe, and another detention officer resigned after being accused of theft and destruction of government property. Investigations into other employees are continuing.

15. STUDY SHOWS HEALTH OF MIGRANT WORKERS DETERIORATES THE LONGER THEY ARE IN THE US

A new study from the California Policy Research Center into the health of undocumented migrant workers shows that they face a number of health-related problems. Primary among these is the reluctance to seek medical attention for minor problems, problems that can become a serious medical condition. While many clinics will treat people regardless of their immigration status, many migrants avoid them because they fear being discovered. Also, because they are undocumented, they do not qualify for Medicaid, meaning they have to pay for treatment out of their own pocket.

This means that in many cases, migrant workers do not obtain medical care until the condition requires emergency treatment. Other than

decreasing the quality of life for migrants, this also has a tremendous financial cost. For example, a diabetic migrant worker who cannot afford \$200 a month in treatment can end up with renal failure. At that point, they are entitled to health insurance from the state, and can obtain coverage for dialysis treatment that costs \$1 million a year.

The study shows that the health of migrants who have been in the US for four or more years is substantially poorer than more recent migrants. For example, recent migrants have lower rates of high blood pressure, obesity, and have lower cholesterol levels. Researchers say there are a number of reasons for this, including a lack of insurance and money to pay for medical treatment, a poor diet, and a lack of exercise when they are not employed.

The budget proposed by President Bush would provide a ten percent increase in funding for medical clinics in the US, including the 400 clinics that provide care to migrants. Many growers say that they would like to see changes in the law that would allow them to provide insurance for migrant workers, regardless of their immigration status. They also support the creation of more mobile medical clinics that can come to workers, because in many cases it is impossible for workers to get to clinics.
