

SISKIND'S IMMIGRATION BULLETIN
December 6, 2002

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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>. Editors: Amy
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1. OPENERS

Dear Readers:

As an author of one of the only books published on the subject of J-1 visas, I have a
special interest in that particular topic. While there are steady changes to report on

this topic, particularly on J-1 waiver applications, I usually do not have multiple J-1 stories to report in one newsletter issue. This week we do. First, a new State Department policy will allow states to add up to ten additional slots to the number of physician waivers they can file in this fiscal year. Basically, the State Department believes that the new law expanding the State 20 program for physicians applies retroactively to last May, and, if a state waiver program had applications received in the fiscal year that ended on September 30, 2002 that could not be approved because the state was out of slots, then they can reclaim those numbers for this year. AILA member George Newman deserves a thank you for his work on this.

This week the State Department informed NAFSA, the international student advisor organization, that institutions with J visa programs will need to electronically submit an Exchange Visitor Program Application (Form DS-3036) by December 16 to ensure that the program is properly enrolled in the Student and Exchange Visitor Information System (SEVIS) by the January 30, 2003 deadline. The SEVIS program is the new online information system designed to keep track of F-1 and J-1 visa holders in the US. The next two months will present colleges and universities around the country with a serious challenge while they attempt to meet this implementation deadline.

Many J-1 doctors eventually go on to seek permanent residency through a National Interest Waiver. Physicians in nine states filed suit against the INS this week challenging a number of aspects of the NIW regulations for physicians. They include limits on specialists and restrictions on the timing of regulations. Carl Shusterman, a friend and colleague on the west coast deserves thanks for leading the charge on this and for filing the suit on behalf of the doctors. Well done Carl!

We report on these stories, the rest of the news as well as our regular features this week. One new item we hope you like. We're having fun with our new flow chart software and have decided to begin posting flow charts in our ABCs feature to illustrate how cases progress. We hope you find this first one on H-1B visas useful.

As always, we remind readers that we're lawyers who make our living representing immigration clients. We would love to discuss becoming your law firm. Just go to <http://www.visalaw.com/intake.html> to request an appointment or call us at 800-748-3819 or 901-682-6455.

Regards,

Greg Siskind

2. THE ABC'S OF IMMIGRATION – THE H-1B PROCESS STEP BY STEP

For a flow chart of the H-1B visa case process, please visit the following link: <http://www.visalaw.com/02dec1/H1B.pdf>

3. ASK VISALAW.COM

The Ask Visalaw.com feature will return with next week's bulletin.

4. BORDER NEWS

Little of substance was accomplished during last week's meeting between US and Mexican government officials. The September 11 attacks, combined with the new Congress that will begin next year, make many believe that there will be no immigration reform any time soon. While there may be no meaningful progress on the issue, President Bush continues to say he supports reform. In a videotaped message played at the meeting, Bush said that work continues to develop "creative new policies so that immigration is legal, orderly and safe." It doesn't appear that there will be significant changes any time soon, but there may be some minor deals. Mexican Foreign Minister Jorge Castaneda said his government will stop calling for the "whole enchilada" and will instead settle for agreements dealing with simpler issues, such as a temporary worker program.

A federal judge this week halted the deportations of eight people to Somalia, saying that their lawyers should be allowed to present their case that it is illegal to deport anyone to Somalia. Civil war has raged in Somalia since 1991, and the country essentially has no government. Advocates for the Somalis argue that because there is no government, the country cannot agree to accept deportees.

A Mexican national has pled guilty to charges of immigrant smuggling. Alfredo Alvarez Coronado admitted to guiding a group of about 20 immigrants across the border and to a van. The van crashed about 30 miles east of San Diego while speeding down the wrong side of the road. Six people died in the crash. Alvarez faces a minimum of three years in prison. According to his attorney, he agreed to work as a guide to make money to pay off his own smuggling debt.

5. NEWS FROM THE COURTS

In re Gomez-Gomez, Board of Immigration Appeals

Glendi Gomez-Gomez was apprehended by the INS during an immigration status check at a bus station in Brownsville, Texas. She was eight years old. She was with an adult who claimed to be her father, who provided the INS with an address in Houston. She did not appear at the removal hearing. The only evidence the INS introduced was the INS form completed at the time of the apprehension. The Immigration Judge found that because of her age, and the fact that there was no evidence to support the man's claim that he was her father, combined with the fact that adults will often make false parental claims in the hope of avoiding detention, the INS form was not reliable and could not be the basis for a deportation order. The INS appealed.

The INS form at issue is a type of hearsay evidence, but is nonetheless routinely admitted as evidence unless there is a specific reason to doubt its veracity. The Board found that the immigration judge's findings about the lack of evidence of a familial relationship and about the prevalence of false parental claims was not a

sufficient basis for doubting the truth of the INS form.

The immigration judge had also found that in servicing the notice to appear on the man claiming to be her father was not sufficient, nor was mailing the notice to the Houston address. She also found that even were the man really her father, the service was still not effective because he was not required to ensure her presence, and it would be a due process violation to penalize her for failing to appear because of her youth. The board rejected this argument, finding that an adult who lives with a minor in proceedings is responsible for ensuring the minor's presence at immigration hearings.

The opinion is available online at <http://www.usdoj.gov/eoir/efoia/bia/Decisions/Revdec/pdfDEC/3483.pdf>.

In re Mejia-Andino, Board of Immigration Appeals

Rosa Mejia-Andino was apprehended by the INS when she attempted to unlawfully enter the US in 1999. She was seven years old at the time. She told the agents that she was trying to get to Detroit, where her parents lived, and gave them an address in Detroit. She failed to appear at the removal hearing, and the INS requested the immigration judge enter an in absentia deportation order. The judge declined to do so, and terminated the proceedings, finding that the INS had failed to properly notify the girl of the time of the hearing. The notice to appear was personally served on the girl's uncle, who was with her at the time of entry. The INS appealed.

INS regulations have specific provisions for issuing notices to appear to people under 14, requiring them to be sent to the person with whom the child resides and also to a close relative. The Board found that serving the notice to the uncle was not sufficient. First, there were questions about whether the man was really the girl's uncle, and second, the Board found that when the child will be living with his or her parents in the US, the INS is required to send the notice to the parents. Here, the INS knew the girl was going to live with her parents in Detroit, and even had an address. Therefore, the Board found, notice of the hearing was not adequately made and the proceedings were properly terminated.

The opinion is available online at <http://www.usdoj.gov/eoir/efoia/bia/Decisions/Revdec/pdfDEC/3484.pdf>.

6. GOVERNMENT PROCESSING TIMES

Texas Service Center Processing Times

Jurisdiction: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee and Texas.

November 30, 2002

Application/Petition Type	Date Based on
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	Pending Initial Adjudication
I-90 to replace lost, damaged or destroyed I-551	4/10/2002
I-90 to renew expiring I-551	N/a
I-102	8/7/2002
I-129/H1B	8/5/2002
I-129/H2A	as received
I-129/H2B	11/4/2002
I-129/H3	11/15/2002
I-129/L	11/4/2002
I-129/Blanket L	11/4/2002
I-129/O	10/4/2002
I-129/P	10/7/2002
I-129/Q or R	Q Current - R 7/18/2002
I-129/TN	n/a
I-129F	9/12/2002
I-129/E	7/8/2002
I-130/Spouse, Parent or Child of US Citizen	6/8/2001
I-130/Spouse of Lawful Permanent Resident	4/3/1998
I-130/Other Relative	4/3/1998
I-131/Advance Parole	10/23/2002
I-131/Advance Parole/HRIFA	n/a
I-131/Reentry Permit	n/a
I-131/Refugee Travel Document	n/a
I-140 A	5/9/2002
I-140 B	5/9/2002
I-140 C	5/9/2002
I-140 D	9/25/2002
I-140 E	6/24/2002
I-140 I	7/18/2002
I-140 G	6/24/2002
I-212	n/a
I-360	8/1/2001
I-485 Asylum-based	n/a
I-485 Refugee-based	n/a
I-485 Employment-based	11/1/2000
I-485 (HRIFA)-based	n/a

I-526	11/15/2002
I-539/F or M non-immigrant	11/3/2002
I-539/J non-immigrant	N/A
I-539/L or H non-immigrant	11/3 or date of I-129
I-539/other non-immigrant	11/3 or date of I-129
I-612	9/17/2002
I-730	n/a
I-751	8/22/2002
I-765/initial asylee or asylum applicant authorization	10/22/2002
I-765/employment authorization associated with Hurricane Mitch TPS	7/5/2002
I-765/employment authorization associated with El Salvador TPS	8/1/2002
I-765/employment authorization while I-485 is pending	8/26/2002
I-765/all other employment authorization	8/19/2002
I-817	12/29/1998
I-821/El Salvador	4/13/2001
I-821/Hurricane Mitch countries	8/17/1999
I-824	8/8/2002
I-829	3/22/1999
I-914	n/a

These are not official INS times, nor are they endorsed by the Central Office.

Source: [American Immigration Lawyers Association](http://www.americanimmigrationlawyers.org)

Missouri Service Center Processing Times

Jurisdiction: LIFE Related Applications

November 30, 2002

Application/Petition Type	Date of Cases Pending Initial Adjudication
I-485 LIFE	8/7/2002
I-817 Family Unity	7/29/2002
I-690 Waivers	10/11/2002

I-539 V1/2/3	8/27/2002
I-129 K3/K4	9/15/2002
I-765	8/16/2002
I-131 Advanced Parole	10/21/2002
I-601	10/4/2002
I-212	current
I-824	current
I-102	current
I-290B	9/23/2002

Dates initially pending adjudication are dependent on date received from lockbox. The shipping of I-485 cases to the field offices for interview/processing is dependent on receipt of fingerprint results. The processing of I-817 and I-539 cases is dependent on receipt of fingerprint results. The processing of I-765 cases filed concurrently with I-817 and I-539 is dependent on receipt of fingerprint results.

These are not official INS times, nor are they endorsed by the Central Office. Source: [American Immigration Lawyers Association](#)

7. NEWS BYTES

This week a federal judge ruled that an unaccompanied immigrant minor from Guatemala be allowed to present his case to a juvenile court judge. Lawyers for Alfredo Lopez-Sanchez say this is the first time such a hearing has been ordered. Lopez, who is now 17, came to the US nearly two years ago, fleeing an abusive father. The INS detained him for 17 months, transferring him from facility to facility. Attorneys challenged his treatment, arguing that the INS was failing to abide by the terms of a 1997 court settlement on the treatment of unaccompanied minors.

Lawyers for Samuel Kooritzky, a Washington, DC area immigration attorney accused of filing thousands of fraudulent labor certification applications, said in opening statements at trial that their client was the victim of a crime. They argue that Kooritzky was the dupe of the man the government alleges was his partner, Ronald Bogardus. Bogardus and Kooritzky were arrested in July, and Bogardus pled guilty and began cooperating with the government. He is expected to be the primary witness in the case against Kooritzky.

This week the Equal Employment Opportunity Commission issued guidance on dealing with cases of job discrimination based on national origin. Under the rules, employers can establish English-only rules without incurring civil rights violations so long as the rules are not adopted with the intent to discriminate and clearly relate to

specific workplace needs. Last fiscal year, the EEOC received just over 8,000 complaints of discrimination based on national origin, about 10 percent of the total number of complaints.

A new report from the Pew Hispanic Center shows that the percentage of Hispanic immigrants completing high school has doubled over the past three decades, from 28 to 56 percent. Within the Hispanic community, there are differences in the graduation rate. Immigrants from Central American were less likely than those from South America to have graduated. The report is available online at <http://www.pewhispanic.org/site/docs/pdf/Immig%20Ed%2012-04-02%20Final.pdf>.

A federal appeals court recently ruled that portions of an investigative report by the INS inspector general accusing former INS general counsel Paul Virtue of improperly influencing decisions on immigrant investor visas must be made public. The report was completed in 1999, the same year that Virtue resigned from the INS. Its topic is whether Virtue gave preferential treatment to visa applications made by companies run by former INS employees. According to the court, the seriousness of the alleged wrongdoing outweighs Virtue's privacy interests. Many of the firms marketing investor visa services have been accused of setting up investments that did not comply with INS rules on the size and type of investment required for the visa.

The Justice Department has ended an investigation of Sun Microsystems, which a laid off employee had claimed was discriminating against US workers in favor of H-1B visa holders. The investigation did not reveal any wrongdoing by Sun, and there will be no complaint filed.

8. INTERNATIONAL ROUNDUP

Canada: A Switch To Detainment For Illegal Aliens

Canada has undertaken a pilot project at one international airport to detain arrivals whose identity is unverified. The goal of Project Identity is to detain those who have destroyed or concealed papers, such as passports or other identification, or who are evasive and uncooperative with immigration officers.

The targets most likely to be detained are refugee claimants, whom often arrive without valid documents. Such travelers have previously been released unless they posed a specific security or criminal threat.

Some observers claim the 180-degree shift brought by Project Identity is an attempt to please the US government.

Those detained are held at an immigration center near Pearson airport. Since the project began in October, 24 people have been detained. Eleven of those have been able to establish identity, and the other 13 remain in detention.

Asylum Applications Rise 11% in UK

Asylum applications to the UK rose by an "unacceptable" 11% this summer over the previous quarter, according to government estimates released last Friday.

It is an astonishing increase in the face of measures designed to tighten the system. But officials stressed that the increase in the number of applications predates new measures to overhaul and tighten the UK's asylum and immigration policy. The Home Office said the closing of the Sangatte refugee camp in France and the new Nationality, Immigration and Asylum Act, which became law earlier this month, were too recent to have affected the figures.

Government leaders said they plan to end the policy of Exceptional Leave to Remain - in which asylum seekers are allowed to stay despite the rejection of their application, because they have need of protection, have family in the country, or have started a higher education course.

"We are now significantly tightening the basis on which leave will be granted to all those who have been refused asylum. We are determined that protection should only be granted to those who really need it. Our asylum system is not a short-cut to work or settlement in the U.K.," said Home Office minister Beverley Hughes.

France To Close Sangatte Refugee Center Four Months Early

The refugee camp at Sangatte, near the Channel Tunnel, was set to shut its doors for good in April, but that closure has been sped up, as part of a deal between the UK and France.

At a joint press conference in London, U.K. Home Secretary David Blunkett and his French counterpart Nicolas Sarkozy said the Sangatte refugee camp will close Dec. 30. In return, the U.K. will grant working visas to up to 1,000 Iraqi Kurds and 200 Afghan refugees at the camp. France will be responsible for the remaining 3,600 refugees who have registered with the camp since September.

The first group of about 40 Iraqi Kurds arrived in Britain on Thursday, where they will be given four-year work visas and help finding jobs. They will receive accommodation and living allowances for three months until they have undertaken training required to find work under their renewable visas.

A lawsuit was filed this week challenging INS regulations implementing the 1999 law providing for National Interest Waivers for physicians. The suit was filed on behalf of nine physicians working in Massachusetts, New York, Georgia, Oklahoma, Washington and California.

The overriding theory of the case is that a federal regulation which conflicts with a federal statute is invalid as a matter of law. The suit is seeking to strike down sections of the regulations that contradict the law. The physicians, being represented by California immigration lawyer Carl Shusterman, challenge several aspects of the regulations:

1. The lawsuit challenges the INS' regulation limiting the NIW program to primary care physicians even though the law says that it applies to any physician working in a medically underserved area.
2. The regulations place very strict time restrictions on when an NIW application must be filed even though the statute contains no such limits. The five years of work in an underserved area must be met within a six-year period. The five years will not start until after the NIW is filed. And the support letter from a state health department must be received in the six months prior to filing the application.
3. The law allows doctors with cases FILED before November 1, 1998 to work for three years rather than five years. The INS says the application must have been PENDING on that date.
4. The law says that a "department of public health in any State" can sponsor a waiver. When the law passed, most people interpreted this literally and believed that local health departments could sponsor waivers as well as state health departments. The INS has interpreted the law to only allow state health departments.
5. The regulations require a new NIW petition every time a physician relocates. There is no mention of such a rule in the statute.

The NIW law reads as follows:

SEC. 5. NATIONAL INTEREST WAIVERS OF JOB OFFER REQUIREMENTS FOR ALIENS WHO ARE MEMBERS OF THE PROFESSIONS HOLDING ADVANCED DEGREES OR ALIENS OF EXCEPTIONAL ABILITY.

Section 203(b)(2)(B) of the Immigration and Nationality Act (8 U.S.C.

1153(b)(2)(B)) is amended to read as follows:

^ (B) WAIVER OF JOB OFFER-

^ (i) NATIONAL INTEREST WAIVER- Subject to clause (ii), the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

^ (ii) PHYSICIANS WORKING IN SHORTAGE AREAS OR VETERANS FACILITIES-

^ (I) IN GENERAL- The Attorney General shall grant a national interest waiver pursuant to clause (i) on behalf of any alien physician with respect to whom a petition for preference classification has been filed under subparagraph (A) if-- ^ (aa) the alien physician agrees to work full time as a physician in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs; and

^ (bb) a Federal agency or a department of public health in any State has previously determined that the alien physician's work in such an area or at such facility was in the public interest.

^ (II) PROHIBITION- No permanent resident visa may be issued to an alien physician described in subclause (I) by the Secretary of State under section 204(b), and the Attorney General may not adjust the status of such an alien physician from that of a nonimmigrant alien to that of a permanent resident alien under section 245, until such time as the alien has worked full time as a physician for an aggregate of five years (not including the time served in the status of an alien described in section 101(a)(15)(J)), in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs.

^ (III) STATUTORY CONSTRUCTION- Nothing in this subparagraph may be construed to prevent the filing of a petition with the Attorney General for classification under section 204(a), or the filing of an application for adjustment of status under section 245, by an alien physician described in subclause (I) prior to the date by which such alien physician has completed the service described in subclause (II).

^ (IV) EFFECTIVE DATE- The requirements of this subsection do not affect waivers on behalf of alien physicians approved under section 203(b)(2)(B) before the enactment date of this subsection. In the case of a physician for whom an application for a waiver was filed under section 203(b)(2)(B) prior to November 1, 1998, the Attorney General shall grant a national interest waiver pursuant to section 203(b)(2)(B) except that the alien is required to have worked full time as a physician for an aggregate of three years (not including time served in the status of an alien described in section 101(a)(15)(J)) before a visa can be issued to the alien under section 204(b) or the status of the alien is adjusted to permanent resident under section 245.'

10. STATE DEPARTMENT POLICY COULD ALLOW UP TO 40 CONRAD WAIVERS PER STATE FOR DOCTORS THIS YEAR

Recently we reported that the Conrad State 20 waiver program for J-1 physicians was extended and expanded to allow state health departments to sponsor 30 physicians per year instead of 20. The State Department has just informed the American Immigration Lawyers Association that could permit states to receive an extra ten waiver slots this fiscal year ON TOP of the thirty slots already available.

The new law says that the legislation extending the waiver program was effective as of May 31, 2002. The State Department believes that this means that states were entitled to have 30 waiver slots for the fiscal year that ended on September 30, 2002. Consequently, states will be able to use the ten extra slots during the current fiscal year which ends on September 30, 2003. The main catch is that the application must have been submitted to the particular state's waiver program during the 2002 fiscal year. The State Department issued the following memorandum outlining the policy:

To: Conrad/State 30 Program
From: U.S. Department of State, J-1 Visa Waiver Division
Re: Amendments to the Conrad/State 20 Program
Date: December 3, 2002

The President signed the Justice Authorization bill on November 2, 2002. (Pub. L.107-273). This law is organized into several divisions, incorporating numerous previously enacted legislation. The Law Enforcement Tribute Act is incorporated under a division of this law and amends the Conrad State 20 Program at section 11018 by increasing the number of visa waiver requests for each state per fiscal year from 20 to 30. This section also authorizes the extension of the Program to 2004.

Section 11018(d) makes the amendments to the Program effective as of May 31, 2002. The Department interprets this to permit states that have reached the numerical limitation of 20 requests for 2002 to submit up to 10 additional visa waiver requests for fiscal year 2002. It is contemplated that these additional cases originated in FY' 02 with the State. The Department will accept such cases with that understanding. If you plan to submit additional requests for fiscal year 2002, the Department would appreciate your doing so as expeditiously as possible to facilitate the processing of your applications by the Visa Waiver Division. The Waiver Division will not accept applications postmarked after September 30, 2003. Also, the applications must be numbered sequentially and for the fiscal year for which it is being submitted.

Applications for fiscal year 2003 are to be submitted in compliance with normal regulatory requirements and must be postmarked no later than September 30, 2003.

11. IMMIGRATION JUDGE FINDS THREE INS OFFICIALS IN CONTEMPT OF COURT

An immigration judge this week found three INS officials in Arizona in contempt of court for failing to respond to a subpoena in a case regarding the INS's treatment of a Guatemalan teenager. The judge harshly criticized the INS what he called arrogance, deceit and civil rights violations, adding that the agency's actions appeared to be designed to drag the case out until Salik turned 18.

The case stems from the INS's failure to fingerprint Elmer Salik-Lopez, who has been in custody since January. Salik had applied for asylum, but each time he was scheduled for a hearing, because he had never been fingerprinted, the hearing was postponed and he remained in INS detention. This was despite INS regulations that limit the detention of minors to no more than 30 days.

Observers say this case is a clear indication of the problems inherent in having the INS both prosecute unaccompanied minors and act as their custodian. In many cases, the INS uses information it discovers in its role as custodian against the child in deportation proceedings. In Salik's case, the INS sought to have his social worker testify against him.

In addition to finding the INS officers in contempt, the judge ordered Salik released from detention and granted him asylum. It is unclear what effect the contempt citation will have, since immigration judges are not part of the federal court system. Observers say, however, that even if the citation is not enforced, it is a clear message to the INS to change the way it deals with juveniles.

12. DEADLINE FOR REGISTRATION OF EXCHANGE VISITOR PROGRAMS NEARS

This week the State Department informed NAFSA, the international student advisor organization, that institutions with J visa program will need to electronically submit an Exchange Visitor Program Application (Form DS-3036) by December 16 to ensure that the program is properly enrolled in the Student and Exchange Visitor Information System (SEVIS) by the January 30, 2003 deadline.

SEVIS is the student tracking system that has been rushed for release in response to the September 11th attacks. It is a web-based system that allows schools to submit information and event notifications to the INS and State Department while foreign students are in the US. It is hoped that the system will make it easier for the INS to remove people with student visas who are not actually attending school.

Since the 1993 World Trade Center bombing, there have been calls for a student tracking system, but none ever went past the pilot program stage. While January 30 is the deadline for full SEVIS implementation, there is a significant possibility that the program will not be fully operational at that time.

13. JUSTICE DEPARTMENT ISSUES REPORT ON MANAGEMENT CHALLENGES FACING INS

Every year, the Justice Department Office of the Inspector General issues a list of management challenges the Department faces. This year, given the problems and changes facing the INS, the OIG issued a list specific to the INS. The ten areas singled out are things that have traditionally been issues for the INS, and will doubtless continue to be even after the INS is dismantled and reorganized in the Department of Homeland Security.

The first challenge area is border security. The northern border remains perennially understaffed, and the southern border, while well staffed, is in need to infrastructure improvements. There are continuing problems with the INS's ability to identify people it apprehends who may be wanted by law enforcement, and in its ability to detain people prior to their deportation. There are also security issues with the Visa Waiver and Transit Without Visa Programs.

The second area is the removal of undocumented immigrants and people who have overstayed their visa. The OIG notes that current INS programs in these areas are clearly inadequate, and that improvement will take significant effort and resources. The third area, development of an entry-exit tracking system, would do much to help the INS with the problem of visa overstays. Such a program was first mandated in 1996, and after the terrorist attacks has become a priority. Developing an effective tracking program may be the biggest challenge facing the INS.

The fourth challenge area is dealing with the staggering backlog of pending applications. As the INS targets one type of case for backlog reduction, processing times for other cases grow. Also, INS efforts to track its processing times are flawed because its systems contain inaccurate data. The fifth challenge for the INS is in its management of financial statements and systems. For the past five years the INS has been in the process of replacing its financial systems, which are not in compliance with federal financial systems requirements.

Information technology is the sixth challenge facing the INS. Implementation of systems is not adequately monitored, and the INS does not have comprehensive performance reviews to determine whether the systems are meeting expectations. Related is the seventh challenge, maintaining computer systems security. Past reports have shown INS systems to be vulnerable to unauthorized use.

The eighth area, management of detention space, has been an increasing problem since 1996, when Congress required the INS to detain an increasingly large number of people. More and more the INS has been forced to rely on outside contractors for detention space, and now nearly 70 percent of detainees are held in facilities not operated by the INS. Numerous reports have shown that these contract facilities habitually overcharge the INS. There are also special problems with the detention of juveniles.

Organizational structure is the ninth challenge area. For years there has been talk of reorganization of the INS, and now it will happen. As the OIG notes, wherever the different components of the INS end up, ensuring continuity and continued provision of services will be critical. Finally, the report focuses on the INS's human capital. There are problems in staffing the Border Patrol and in recruiting and maintaining service employees. There are also tremendous differences between each INS office, and some appear to not even be aware of standard INS policies.

14. LEGISLATIVE UPDATE

There was no legislative activity this week, as Congress has completed its 107th session. The 108th Congress will convene in the first week of January.

To view the legislative chart, please visit: <http://www.visalaw.com/advocacy.html>
