

SISKIND'S IMMIGRATION BULLETIN  
November 8, 2002

E-mail subscribers as of 10 October 2001: 30,159 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>.

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consultation with the firm, go to <http://www.visalaw.com/intake.html>. Editors: Amy  
Ballentine and Greg Siskind. Contributors: Karen Weinstock, David Delgado and  
Mick Wright.

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1. OPENERS

Dear Readers:

I have been asked several times this week whether the Congressional elections are  
good news or bad news for immigration advocates. Many may be worried that

Republicans will not be as pro-immigration as Democrats and that their sole hold on power spells bad news.

I would not be so worried. In fact, things could very well get better. Sam Brownback, the Senator from Kansas who will take over the Senate Immigration Subcommittee, is truly a friend of immigrants. And on the House side, the anti-immigration chair of the House Immigration Subcommittee lost his seat. There are several pro-immigration Republicans on that committee, and it is very possible that one of them could take the helm. And with President Bush feeling empowered from a new mandate, he may be more effective in pushing his generally pro-immigration agenda. This week, I write a commentary giving my thoughts on what the election means and how the 108th Congress may approach immigration issues.

This week we also have articles on the latest immigration news including another expansion of the Special Registration program and an important Supreme Court decision in an asylum matter. We have an ABCs of Immigration article on K-3 visas as well as our regular features.

In firm news, some of you may have heard me interviewed on the nationally syndicated Ken Hamblin radio show discussing the immigration debate. I believe I managed to hold my own against a host who is generally not in favor of immigration. I also enjoyed meeting many of our readers at our firm's booth at the Region VII meeting of NAFSA: The Association of International Educators meeting in Tennessee.

Finally, 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.

Kind regards,

Greg Siskind

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## 2. THE ABC'S OF IMMIGRATION – K-3 VISAS

On December 21, 2000, the Legal Immigration and Family Equity (LIFE) Act amended the K nonimmigrant visa category to include the spouse and unmarried children of United States citizens. With this modification, the spouse and children of a United States citizen may be admitted to the United States as K-3 and K-4 nonimmigrants to complete their process for permanent residence. One of the principal benefits of K-3 and K-4 visas is that immediate families will be unified several months faster than if they were pursuing a typical immediate relative immigrant petition.

### **Eligibility**

To be eligible for a K-3 nonimmigrant visa, the individual must meet the following requirements:

- 1) Be the spouse of a United States citizen.

- 2) Have a pending relative petition, Form I-130 filed with the INS.
- 3) Have the intent to enter the United States in order to await the completion of the permanent residence process.
- 4) Have an approved Form I-129F, Petition for Alien Fiancé. This form shall be forwarded by the INS to the United States consulate where the spouse wished to apply for the K-3 visa. The consulate specified on the Form I-129F must be one of the following:
  - a) If the marriage occurred outside of the United States, the consulate where the marriage took place, OR
  - b) If the marriage occurred in the United States, the consulate with jurisdiction over the current residence of the alien spouse.

K-4 nonimmigrants are derivative beneficiaries of the K-3 nonimmigrant. To be eligible for the K-4, the applicant must be unmarried, under 21 years of age, and be the child of the principle K-3 visa applicant or holder. Separate Form I-130s and Form I-129Fs are not required for the K-4 applicant. However, in order to ensure that there are no problems during the adjustment of status process, it is recommended that the children's I-130 be filed concurrently with the I-130 for the K-3 applicant.

### **Where to File the Forms**

The Form I-130 must be filed with the INS at the service center with jurisdiction over the residence of the United States citizen.

The Form I-129F must be submitted to the following:

US Immigration and Naturalization Service  
P.O. Box 7218  
Chicago, IL 60680-7218

### **Applying for Adjustment of Status**

Obtaining the K visa and traveling to the United States does not complete the entire process for permanent residence. Once in the United States, each K-3/4 nonimmigrant must file a Form I-485, Application to Register Permanent Resident or Adjust Status, with the INS. These applications for adjustment of status can only be submitted after the spouse's Form I-130 has been approved by the Service. If a Form I-130 has not been completed for each of the K-4 children, the children must file a Form I-130 concurrently with their Form I-485.

### **Work Authorization**

Both K-3 and K-4 nonimmigrants are eligible to obtain work authorization while their permanent residence application is pending. In order to apply for work authorization, individuals must submit a Form I-765, Application for Employment Authorization, with \$100 to the Chicago address listed for the submission of the Form I-129F.

**Travel and Termination of Status**

Once a nonimmigrant has been granted a K-3/4 visa, the individual may travel outside the United States and be readmitted with a valid K visa. These visas are no longer valid 30 days after one of the following:

- 1) Denial of the I-130.
- 2) Denial of Adjustment of Status.
- 3) A final divorce of the marriage.
- 4) A K-4 nonimmigrant turning 21 years old or marrying.
- 5) Approval of permanent residence for the K-3, thus terminating the derivative K-4 status.
- 6) The expiration of two years without a request for an extension of stay.

The INS enacted interim regulations implementing this law on August 14, 2001.

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3. ASK VISALAW.COM

If you have a question on immigration matters, write Ask-visalaw@visalaw.com. We can't answer every question, but if you ask a short question that can be answered concisely, we'll consider it for publication. Remember, these questions are only intended to provide general information. You should consult with your own attorney before acting on information you see here.

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I currently hold an H1B visa and work in the US. I plan to change employers. My question is as follows: if the new employer successfully gets me a new I-797 and I travel outside of the US to my country on a vacation, would it be possible to re-enter the US with the old visa that has the old employer's name on it (along with the INS approval Notice) or would it be necessary to apply to get a new visa stamp from the US embassy in my country with the new employer's name on it.

Yes, you can reenter without getting a new visa if you have maintained your status and you have a new H-1B approval notice.

\*\*\*\*\*

Hello. Does the time spent on National Interest Waiver status (which is, I understand, an immigration status) count for citizenship application? Or the time count starts only after having the "green card stamp" issued (despite having been, as required through NIW, on an immigrant status/visa for five years)?

After you are granted that national interest waiver, you then either went through adjustment of status or consular processing to receive permanent residency. Your citizenship residency period only begins when you complete adjustment of status or consular processing.

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I have been trying to get my parents and my younger sister to visit USA and spend around 2-3 months with us. My parents were issued with the visitor visa (which I believe is valid for 10 years), but my sister was denied. (this was around this time last year). The reason quoted for her denial was - possible immigrant. She has a Engineering degree in Environmental Sciences and at the point when the visa was applied for, she had just graduated. Although I had sent all the papers from my side, and by which it was very evident that I am still on H1-B, my sister's visa was denied. Now that nearly a year has passed by, I was wondering if it was a good idea for her to go back to try again (now that she is on a job). It is in this scenario, that I would seek your advice. Is there any paper or document that I can send to the consulate that will help get my sister a visitor's visa?

Once denied a visa it is generally difficult to get the consular officer to change his or her mind unless a long time has passed. One year may be a little short. As for the type of documentation that your sister might present, you might find the article on our web site at <http://www.visalaw.com/02may1/12may102.html> helpful.

\*\*\*\*\*

Hi! I am from California, and have a question on I-130. I applied for my parents in Nov 2002 when they were here. I-130 was filed in the Laguna Niguel center. they left soon after that, we did not file a I-485 since they had to go back to India. The current processing date for I-130 in the Laguna Niguel Center is June 2002, but I have not heard regarding their application. Any idea what's wrong and what we can do?

I presume you mean you applied in November 2001. Did you get a receipt? If so, check the INS case status check web site at <https://egov.ins.usdoj.gov/graphics/cris/jsps/caseStat.jsp>. If the case is just pending and there is no action, you may want to consider either getting assistance from a Congressman's office or an immigration lawyer since this case is pending for much longer than normal.

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I wonder if you could give me an advice. About 10 years ago, I've ever been approved for immigrant visa, but then I dropped it just because I had to return to my country to take care of my mom who was seriously ill. I win for green card lottery, and I am still waiting for my priority date recent for interview. My question

is whether there is any possibility of refusal of my application since I've ever dropped my immigrant visa 10 years ago.

Your previous abandonment of an immigrant visa should not be a problem for a new green card application.

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Does employment-based I-485 need to be file with the Regional Service Center (who have already approved the I-140) or can it be filed with the Local INS Center?

Employment-based I-485 petitions are filed at the INS Regional Service Centers. If an interview is found by the INS to be required, it will be conducted by the local INS office.

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Can a separated couple file (one is U.S. citizen) for adjustment of status for the non-citizen spouse to get a green card? They have been married over 20 years and have two children but separated over a year ago.

Unfortunately, the couple would have to be living together in good faith. It does not matter that the marriage was entered into in good faith if the marriage is no longer genuine.

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Hi, I applied for B1/B2 visa in the US Embassy in Moscow, but my application was rejected. Could you give me a piece of advice how can I find out the reason of rejection?

You should have received a written denial. I suspect you were denied under INA Section 214(b). That is the section of the law that says that you must prove you do not intend to immigrate to the US if you enter on a visitor visa.

\*\*\*\*\*

My question is if the new law can help me. My mother applied for my LPR on 01/15/1999 when I was 18 years old, under 2A category. My petition is still pending.[as on 10/15/2002 Texas center has approved up to 04/03/1998]. Today I am 22 years old. So according to the old law I am in 2B category. Will new Aged out law help me? Am I still in 2A category OR in 2B category.

The new age out law will help you. The time that the I-130 is pending is subtracted from your age. That means that when your priority date becomes current, the amount of time your I-130 has been pending (nearly four years so far) will be subtracted from your actual age on that date. So, for example, if the category became current next month, you would only be 18 years old for purposes of determining whether you remain eligible in the 2A category. So it is actually to your advantage that the INS is taking so long in approving the I-130.

Authorities at the Port of Houston recently arrested 23 stowaways after some of them jumped from the barge they were traveling on into the shipping channel. They believe that one person drowned in the heavy currents.

\*\*\*\*\*

Nineteen Haitian migrants who were apprehended by the Coast Guard before making it to US soil were returned to Haiti this week. The move angered many advocates, as the group was part of a larger group of more than 200 that arrived in dramatic fashion last week. The others, who made it to shore, are still being held in INS detention.

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This week the Coast Guard announced that it was stepping up patrols off the Florida coast in an effort to thwart a potential increase in undocumented migration from Cuba, the Dominican Republic and Haiti.

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The suspected leader of an immigrant smuggling ring was arrested by US authorities in El Paso last week. Ruben Patrick Valdes, a US citizen, was deported from Mexico and Mexican officials took him to the border and presented him to INS agents. Officials say that the smuggling ring was responsible for transporting hundreds of immigrants into the US, and is believed to have been involved in an incident in which two people died last summer after being sealed in a tractor trailer rig.

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## 5. NEWS FROM THE COURTS

### US. Portillo-Aguirre, Fifth Circuit

Reynaldo Portillo-Aguirre was on board a passenger bus when it was stopped at an immigration checkpoint in south Texas. Three agents were involved, one checking outside luggage compartments, one walking with a drug detecting dog through the passenger cabin, and the third checking people's immigration documents. The agent later testified that he believed Portillo appeared nervous from the moment the bus was stopped, but because he was a permanent resident, he did not further investigate until after completing the immigration inspection. At that point, the agent noticed a small bag stowed beneath Portillo's seat and began questioning him. The agent asked to look in the bag, and Portillo opened it. According to the agent, it was clear there were things in the bag Portillo was trying to hide, and he asked permission to search the bag himself. Portillo agreed, and the agent found a wrapped package similar to those often used to transport drugs. Portillo was arrested and eventually convicted of possession with intent to distribute cocaine.

Portillo appealed his conviction, arguing that the district court improperly failed to exclude evidence gained during the stop, which, Portillo argued, was an unconstitutional search and seizure.

In 1976, the Supreme Court held that immigration checkpoints where people's immigration status is checked without there being any specific reason to believe the

person is undocumented are constitutional. However, a stop involving anything more than a couple of questions needs to be justified by probable cause. In this case, the agent had completed the immigration check before noticing Portillo's bag. The question for the court is whether the agent's actions after completing the immigration check extended beyond those allowed under Supreme Court precedent.

The court found that in this case, the stop was unconstitutional. The purpose of the checkpoint was to determine immigration status and nothing more. Searching for illegal narcotics was not part of the purpose of the checkpoint. Waiting until after completing the immigration check to begin a narcotics check, the court found, was impermissible in the absence of specific reasons to do so, and Portillo's general nervousness was not a specific reason. Because the evidence was produced through an illegal search and seizure, it cannot be used as evidence and must be excluded from a criminal trial. Therefore, the court remanded the case with instructions to enter a judgment of acquittal.

The opinion is available online at  
<http://caselaw.lp.findlaw.com/data2/circs/5th/0150476cr0.pdf>.

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#### Bosede v. Ashcroft, Seventh Circuit

Stephen Bosede, a citizen of Nigeria and permanent resident of the US, was thrice convicted on felony drug charges. After the third conviction, the INS placed him in removal proceedings. An immigration judge found him removable and ineligible for any form of relief, and was affirmed by the Board of Immigration Appeals. Bosede then appealed to the Seventh Circuit.

Both Bosede and his wife, who is a US citizen, were diagnosed as HIV positive in 1997. Before the immigration judge, Bosede sought a number of forms of relief from deportation. First, he claimed he was eligible for asylum. Second, he argued that he was eligible for withholding of removal. Finally, he claimed to be eligible for relief under the United Nations Convention Against Torture. Each claim rested on two primary facts: Bosede is a Christian and is HIV positive. The immigration judge found that Bosede was statutorily ineligible for asylum and withholding because of an aggravated felony conviction, and that he was ineligible for CAT relief because it was not established that it was more likely than not that he would be tortured in Nigeria.

On appeal Bosede dropped the asylum claim, focusing on the withholding and CAT claims. He presented evidence to the Seventh Circuit showing that one of the convictions, the one the immigration judge found to be a particularly serious crime, which makes a person ineligible for withholding, was not, in fact, within the definition of a particularly serious crime.

The Seventh Circuit found that there were serious problems with the way the immigration judge and Board of Immigration Appeals had handled Bosede's case. However, it found that it did not have jurisdiction over the case because Bosede had not exhausted his administrative remedies. Therefore, it dismissed the case.

The opinion is available online at  
<http://caselaw.lp.findlaw.com/data2/circs/7th/013188p.pdf>.

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## 6. GOVERNMENT PROCESSING TIMES

### Nebraska Service Center Processing Times

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

October 15, 2002

Form	Date in Process*
I-90 to replace lost, damaged or destroyed I-551	3/20/02
I-90 to renew expiring I-551	3/26/02
I-102	1/24/02
I-129 - H1B	8/15/02
I-129 - H2A	10/1/02
I-129 - H2B	9/9/02
I-129 - H3	8/27/02
I-129 - L	9/10/02
I-129 - Blanket L	9/9/02
I-129 - O	8/8/02
I-129 - P	10/1/02
I-129 - Q or R	6/13/02
I-129 - TN	10/1/02
I-129F	5/31/02
I-130 -IR	5/16/02
I-130 – F1	5/9/01
I-130 – F4	4/14/01
I-130 –2A	4/12/01
I-130 – 2B	4/14/01
I-131 - Advance Parole	8/27/02
I-131 - Advance Parole for HRIFA principal applicant	4/17/02
I-131 - Reentry Permit	4/26/02
I-131 - Refugee Travel Document	10/1/02
I-140 A	2/5/02
I-140 B	3/22/02
I-140 C	6/11/02

I-140 D	7/15/02
I-140 E	8/20/02
I-140 I	3/8/02
I-140 G	3/15/02
I-212	10/1/02
I-360	9/28/01
I-485 Asylum-based	9/30/98
I-485 Refugee-based	3/5/01
I-485 Employment-based	6/17/01
I-485 Haitian Refugee Immigration Fairness Act (HRIFA)-based	1/1/00
I-526	not processed at the NSC
I-539 –EOS/F or M	8/20/02
I-539 – EOS/J	8/21/02
I-539 – EOS/L or H	8/5/02
I-539 – EOS/other	8/22/02
I-539 – COS/F or M	8/27/02
I-539 - COS/J	8/16/02
I-539 – COS/L or H	7/31/02
I-539 – COS/OTHER	8/20/02
I-612	10/1/02
I-730	4/30/02
I-751	5/3/02
I-765 - asylee	8/26/02
I-765 - Hurricane Mitch TPS	10/1/02
I-765 - El Salvador TPS	7/22/02
I-765 – pending adjustment	8/27/02
I-765 - other -	7/24/02
I-817	4/22/02
I-821 – TPS El Salvador	7/22/02
I-821 – TPS Hurricane Mitch countries	6/17/02
I-824 -	1/21/02

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

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## 7. NEWS BYTES

A group of US farm workers has filed suit against a grower, claiming that the San Diego area company Harry Singh and Sons improperly replaced them with workers from Mexico. The workers say the Singh did not make a good faith effort to find workers in the US, and that the US workers who were hired were paid less than those from Mexico. This is the second such suit filed in California this year.

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The Colorado Alliance for Immigration Reform, which advocates for reduced immigration to the US, recently announced that it would file suit against the city of Denver. According to the group, Denver's policy of accepting identification documents issued by Mexican consulates violates federal immigration laws. This is the first such challenge to the acceptance of the cards since the Mexican government began issuing them last year.

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A federal judge recently dismissed a lawsuit against Tyson Foods, Inc. subsidiary IBP Fresh Meats. The suit had been filed by the federal government, which claimed that Tyson depressed wages by hiring undocumented immigrants. In dismissing the suit, the judge found that there was no jurisdiction over the case because the wages of workers at the plant involved are set through a collective bargaining agreement. Tyson is still facing a criminal case accusing it of importing undocumented workers to help keep labor costs low.

\*\*\*\*\*

The American Immigration Lawyers Association recently obtained information on I-129 processing at the California Service Center. The following chart is broken down into regular cases and cases filed with a request for Premium Processing (PP), and shows what percentage of cases were approved, denied, and received a Request for Evidence (RFE).

	July 2002		August 2002		September 2002	
	Regular	PP	Regular	PP	Regular	PP
Approved	55.81	78.23	51.41	79.51	49.61	77.96
Denied	6.72	6.66	17.82	5.81	21.11	6.11
RFE	37.32	13.93	30.77	12.43	29.28	14.79

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## 8. INTERNATIONAL ROUNDUP

### Canadians With Criminal Records Banned From Sponsoring Immigrants

The Canadian Government have banned Canadian citizens and permanent residents with a criminal record from sponsoring their spouses, children and others to Canada.

Toronto immigration lawyers and social workers say they are outraged and that the ban will keep thousands of families separated from their loved ones in Canada. According to a source quoted in the Toronto Sun, people could be prohibited from sponsoring if they have convictions ranging from mischief, fraud, theft or trespassing.

Immigration spokesman Nancy Duarte said the law is part of a new Immigration and Refugee Protection Act, which took effect last June. Duarte said the bar is intended to "protect immigrants from entering potentially abusive situations." The ban could be lifted for an individual who has obtained a pardon for the offence or can prove he has remained trouble-free for five years.

Immigrant advocates say the ban was not discovered until recently because the act is so new.

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#### Russia To Introduce Quota For Guest Workers

In 2003, Russia will begin counting its guest workers. The government will introduce a quota for immigration of foreign labor force, allowing only 530,000 foreigners to come to work in Russia.

The advent of a guest worker quota has already worried some companies that hire foreign specialists, as there are at least 500% more foreigners working in Russia currently.

Labor Minister Pochinok said the Government would "introduce a small quota so far on purpose, just to calculate. Until the 3.5 million people working illegally (according to the Federal Migration Service of the Interior Ministry) are revealed we will permanently increase the quota, and the measures for limitation of foreign labor force will be taken later."

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#### Iran Deports Son of Osama Bin Laden

On Monday Iran confirmed the arrest and deportation of a son of fugitive al-Qaeda leader Osama bin Laden.

Government spokesman Abdullah Ramezanzadeh said, "About two months ago, we arrested some 20 people who had entered Iran illegally, without knowing the son of bin Laden was among them. Immediately, we sent them back across the (Pakistani) border."

Ramezanzadeh said the group entered the country from Pakistan and was sent back because "they were not carrying identity papers and could not be identified." He said they found out later that Bin Laden's son had been among them. Officials have not named him or given any other details.

Pakistani spokesmen said they had no information about the report and would be looking into the matter.

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#### 9. COMMENTARY - FUTURE OF IMMIGRATION POLICY UNCLEAR IN WAKE OF ELECTION, BY GREG SISKIND

I've decided to reveal a big secret in this week's newsletter. Most immigration lawyers and most pro-immigration advocates are Democrats (myself included). That's probably why so many of my colleagues have been gloomy this week in the wake of Tuesday's midterm national elections.

But partisan leanings may be clouding a happy truth - Republicans are increasingly pro-immigration and the future of immigration legislation in Congress may be rosier than the conventional wisdom would suggest.

John B. Judis and Ruy Teixeira, in their new book THE EMERGING DEMOCRATIC MAJORITY, outline a potential scenario to which many Republicans are beginning to pay attention. Judis and Teixeira argue that the electorate is becoming more diverse, with increasing numbers of Asian and Hispanic voters going to the polls. Such voters have traditionally voted for Democrats. White, anglo American voters may continue to vote Republican, but their numbers are not increasing. Judis and Teixeira's conclusion that the Democrats will reap the rewards of this massive demographic change assumes that the Democrats will attract these voters.

Smart Republicans have begun to figure out that there is more to be gained in the long run by reaching out to immigrant voters. In the past, Republicans have had success in the past using immigration as a wedge issue and playing to white Americans' fears of newcomers. But Republican leaders have begun to steer their party away from this course and you are less and less likely to see such appeals today.

So is there evidence from Tuesday's election that would justify optimism?

First and foremost, we have a President who, at least in terms of his words, is one of the most pro-immigration Presidents in decades. While the President has given a fair amount of leeway to Attorney General John Ashcroft to impose tighter security measures relating to immigration, he still regularly expresses his view that immigration is good for the country and he recently resumed talks with Mexico regarding establishing a genuine guest worker program. He has also expressed his support for reinstating Section 245i of the Immigration and Nationality Act.

Bush has good political reasons for taking a pro-immigration position. Bush lost key states like New York and California and barely won Florida, a state that used to be a reliable vote for Republicans. These states have two things in common - a lot of electoral votes and a lot of immigrant voters. Reapportionment following the 2000 election means even more electoral votes are shifting to states with a lot of immigrants so the President cannot ignore these states.

Bush has met many times with Mexican President Vicente Fox, who is pushing Bush to enact a guest worker program. Bush has been putting Fox off using 9/11 as an excuse, but he'll have a harder time doing this as we move further away from the tragedy. He has contended that putting the issue off was just temporary and would

resume once national security issues were addressed. With a mandate from this election, Bush may feel empowered to push the agenda forward again.

What about the Congress?

In the House, things might get better. Why? Control of the House did not shift, but the anti-immigrant chair of the House Immigration Subcommittee, Pennsylvania's George Gekas, lost his seat in a very tight race. That means that one of the remaining Republicans on the committee is likely to take the spot. There are seven remaining Republicans on the committee. Two of them, Lamar Smith, the past chair, and Randy Forbes, are both part of the Congressional Immigration Reform Caucus. This group of 50 members of the House generally supports very tight immigration rules. Smith will not take the chair again due to rotation rules. Elton Gallegly of California generally has voted with Lamar Smith and is considered a restrictionist even though he is not a member of the immigration caucus.

One way to judge the others is by how immigration restrictionist groups rate them. The worse their ratings from such groups, the more pro-immigration they can be considered. Melissa Hart of Pennsylvania gets a D+ rating from Americans for Better Immigration. Elton Gallegly gets an A+. Daryl Issa of California gets a D+. Jeff Flake of Arizona gets a C+. Chris Cannon of Utah gets a D. Lamar Smith gets a B+. So consider the appointment of Hart, Issa or Cannon good news. I would be surprised if House Republican leaders let an immigration restrictionist take the chair of this committee again given the stakes in 2004 and the President's pro-immigration agenda.

Well, on the Senate side, we already have had a preview of things to come since the Republicans ran the Immigration Subcommittee only a little over a year ago. Sam Brownback will presumably retake his seat as the chairman of the committee (though it is still not certain he will be reappointed to head the committee). His brief record as Subcommittee Chair is generally considered pro-immigration. He has been particularly vocal in pushing for easing the rules for the immigration of health care professionals. And Americans for Better Immigration gave him a D- rating indicating that he is very pro-immigration. Brownback actually gets the same grade as Ted Kennedy, the Democratic Senator who has chaired the committee for the last year.

Other Senate Republicans on the committee are generally pro-immigration. Mike DeWine of Ohio gets a D- rating from Americans for Better Immigration and Arlen Specter gets a D rating. Charles Grassley of Iowa and John Kyl of Arizona get a so-so B- grade. Consequently, we can expect the Senate's immigration committee to remain pro-immigration.

There are some significant changes in the overall makeup of the Senate that are worth noting. John Sununu, the new Senator from Vermont, overcame negative attacks in the primary from the outgoing Republican Bob Smith over Sununu's support of Section 245i. Lindsay Graham of South Carolina is a member of the Immigration Reform Caucus in the House and could be a vocal anti-immigrant voice in the Senate as his state's new Senator. Georgia's new Senator, Saxby Chambliss had an anti-immigrant record in the House, though lately he has been moderating his views.

The House Immigration Subcommittee needs to be watched to determine the future of the immigration debate in this country. Who takes that seat will determine

whether pro-immigration or anti-immigration forces will have the upperhand in the 108th Congress.

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#### 10. SUPREME COURT REVERSES NINTH CIRCUIT ASYLUM GRANT

This week the Supreme Court reversed without oral arguments a Ninth Circuit case granting asylum to a man from Guatemala. The man claimed to have been threatened by guerrillas during the country's civil war. His application was rejected by an asylum officer, an immigration judge and the Board of Immigration Appeals, but was granted by the Ninth Circuit. The Ninth Circuit found that the Board had erred in concluding that the past persecution Fredy Ventura suffered was not on account of his political opinion. In addition, the Ninth Circuit addressed an argument the INS made before the Board, but which the Board did not address. This was that conditions in Guatemala had so changed since 1993, which Ventura entered the US, that even if he had been the victim of persecution, there was no reason to believe he would be now. Both the INS and Ventura asked the Ninth Circuit to remand the case so that the BIA could address this issue.

Rather than remand the case, however, the Ninth Circuit addressed the issue itself, finding that what changes there were in Guatemala did not eliminate the possibility that Ventura would again face persecution there. The INS then sought review by the Supreme Court, arguing that the case should have been remanded to the Board.

According to the Supreme Court, the Ninth Circuit erred in granting asylum itself, rather than remanding the case back to an immigration judge. In finding that the INS could not rebut the presumption that Ventura would face persecution in Guatemala, the Ninth Circuit was engaged in fact finding. It is well-established that appellate courts are not to engage in fact finding, but are to reach a decision based on facts already in the record. Only in rare cases is it appropriate for an appellate court to act as a fact finder. In addition to this consideration, in administrative matters, there is the fact that the administrative body, in this case the BIA, has more experience and knowledge both of the applicable legal principles and factual situations. Therefore, the Supreme Court reversed the grant of asylum and remanded the case with instructions for the Ninth Circuit to remand it to the Board.

Tensions between the Supreme Court and the Ninth Circuit have existed for many years, and are growing considerably worse. The Ninth Circuit, which hears cases originating in Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon and Washington, is one of the busiest in the country. It is also the most liberal federal appellate court, and more of its decisions are reversed by the Supreme Court than any other circuit. The Ninth Circuit also hears more immigration related cases than any other circuit, and has issued many of the most important asylum decisions. In briefs for this case, the US government accused the Ninth Circuit of being overly sympathetic to people seeking asylum. It remains to be seen what effect this case will have on the Ninth Circuit.

The case is INS v. Ventura. The Supreme Court's opinion is available at <http://www.supremecourtus.gov/opinions/02pdf/02-29.pdf>.

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#### 11. INS EXPANDS SPECIAL REGISTRATION SYSTEM

This week the INS released an additional regulation on the special registration program, the National Security Entry-Exit Registration System (NSEERS). The regulation requires nonimmigrants who are citizens or nationals of designated countries (Iran, Iraq, Libya, Sudan, and Syria), regardless of whether they have dual citizenship in another country, who entered the US on or before September 10, 2002, to register with the INS on or before December 16, 2002.

Only men over age 16 are required to register. According to the notice published in the Federal Register, the reason for this is that it would be too time consuming to require all people from the designated countries to register. Also, any male who would otherwise be required to register is exempt from the requirement if they have applied for asylum.

As with those already subject to the special registration system (people from Iran, Iraq, Libya, Sudan and Syria admitted as nonimmigrants after September 11, 2002), nonimmigrants covered by this new rule will be required to reregister annually. Failure to comply with the registration requirements will result in the person's name and other information being entered into the National Crime Information Center.

The regulation goes into effect on November 15, 2002.

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## 12. US, CANADA CONTINUE TO SPAR OVER US TREATMENT OF CANADIAN RESIDENTS

The Canadian government reports that it has been given assurances by the US Ambassador to Canada, Paul Cellucci, that citizens of Canada will not be subject to increased security requirements, regardless of where they were born. Last week Canada issued a travel warning to citizens of Canada who were born in Iran, Iraq, Libya, Sudan, Syria, Pakistan, Saudi Arabia and Yemen, advising them to carefully consider any attempt to enter the US.

While citizens of Canada will not be subject to the special registration system, rules for entry to the US for many landed immigrants will be changing. Under a new policy, which is to take effect on December 16, landed immigrants who hold citizenship in any country that is a member of the British Commonwealth other than Australia, New Zealand, Singapore and the United Kingdom will be required to have a visa.

The warning was just another sign of how tense relations between the US and Canada have become since September 11<sup>th</sup>. For months, the Canadian government has been seeking to interview a Canadian citizen detained at Guantanamo Bay, Cuba, and just a few weeks ago the US deported a Canadian citizen born in Syria to Syria, where he has since been arrested.

There are reports that a similar policy of considering only citizenship and not country of birth may be extended to citizens of Israel who were not born there.

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## 13. LEGISLATIVE UPDATE

This week President Bush signed the Justice Department appropriations bill for 2003, titled the 21st Century Department of Justice Appropriations Authorization Act. The bill includes several immigration proceedings, including expansion of the State 20 program to 30 slots, H-1B extensions in cases with long pending labor certifications, and changes to the EB-5 immigrant investor program. More details on the legislation are available at <http://www.visalaw.com/02oct1/2oct102.html> and <http://www.visalaw.com/02oct1/9oct102.html>.

Bush also signed H.R. 4967, Border Commuter Student Act of 2002.

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

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