

SISKIND'S IMMIGRATION BULLETIN
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1. OPENERS

Dear Readers:

Why do major immigration events tend to happen on Fridays when I'm trying to
wrap things up for the weekend? The Senate just passed a cloture motion by a vote
of 65 to 29 that virtually assures the Homeland Security bill will become law in a few

days. The Homeland Security legislation will *dramatically* alter many aspects of the immigration system. We intend to provide more and more information on the legislation in the weeks and months to come in addition to the brief summary we provide this week. The bill itself is more than 400 pages long and it will take some time to digest all of the changes.

Most significantly, the INS will be no more. Instead, two new agencies - one an enforcement agency and one a benefits agency - will now be in two different sections of the new Homeland Security Department. The question of how the INS should be structured has been debated for years. While pro-immigration organizations have generally argued against splitting the agency up, this has not been a uniform position. I, for example, have suggested in this column in the past that formally splitting the agency could improve the culture at the agency that administers immigration and citizenship benefits. Furthermore, agency funding has been steadily diverted from benefits to enforcement over the year and a services-only agency may be able to get adequate funding more easily particularly if it can find enough money through the fees it charges.

New agencies with the names Bureau of Border Security and the Bureau of Citizenship and Immigration will take over the INS' previous functions. One small victory for immigration advocates was getting the services-oriented BCI moved to a so-called "fifth box" on the organizational chart and the new agency will report directly to the Deputy Secretary for Homeland Security. Previous versions of the bill had the director of this bureau reporting to the Border and Transportation Security chief. This move is said to give the services agency more prestige and access in the department infrastructure.

The Department of State is taking a major hit to its prestige with the new bill. The State Department will still issue visas at US consulates. But Homeland Security officers will now have the power to veto a consular officer's approval of a visa and the new department will set overall visa issuing policy.

Last week I talked about the effect of the elections on the immigration committees in the House and Senate. With this new bill, there will no longer be these committees since they are part of the committee that oversees the US Department of Justice. How Congress will reorganize itself to oversee the new HS Department and its 22 subsidiary agencies remains to be seen.

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.

Regards,

Greg Siskind

2. THE ABC'S OF IMMIGRATION – EXPEDITED REMOVAL

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) created a new form of deportation called expedited removal, which the Immigration

and Naturalization Service began enforcing on April 1, 1997. Expedited removal allows the INS Commissioner to designate certain individuals who can be removed from the United States based on an order from an INS officer rather than an Immigration Judge.

Since April 1, 1997, INS has applied the expedited removal provisions to individuals who arrive at a United States port-of-entry with invalid entry documents or who attempt to enter the United States through fraud or misrepresentation. Expedited removal is also applied to aliens interdicted at sea and then brought to the United States in government custody. This week, the INS expanded the expedited removal process to include certain aliens who arrive in the United States by sea. More information on these new regulations can be located at (place the link to the new regulations article).

Initial Process

INS officers participating in the expedited removal process have authorization to issue orders of removal. These orders, which must be reviewed by a senior level supervisory immigration officer, have the same authority as an order issued by an immigration judge. Consequently, aliens who receive an expedited order of removal are subject to the five-year bar to re-entry.

Individuals issued a removal order pursuant to this procedure must 1) have been read and understand a sworn statement and 2) have been asked if they fear returning to their home country. Therefore, aliens subject to the expedited removal provisions will inevitably be issued orders and removed unless the individuals express a fear of returning to their home country.

Credible Fear

Aliens who either express a) an intent to apply for asylum or b) a fear of returning to their home country shall be referred to an INS asylum officer for a credible fear interview. During the credible fear interview, an INS asylum officer will evaluate whether the alien has a credible fear of persecution and/or torture in his/her home country. Credible fear interviews are normally not conducted less than 48 hours after the alien's initial expression of potential fear.

An affirmative credible fear finding by the INS asylum officer does not mean that the alien has been granted asylum. Individuals who are found to have a credible fear of persecution and/or torture are placed in removal proceedings before an immigration judge. At this hearing, the alien will have the opportunity to apply for relief from removal in the form of asylum.

If the INS asylum officer finds that an individual does not have a credible fear of persecution and/or torture, the alien may request a review of this decision by an immigration judge. By statute, this review must be conducted within 24 hours if possible, and under no circumstances later than 7 days after the decision of the INS asylum officer. During the credible fear review, the immigration judge solely determines whether the alien has a credible fear of persecution and/or torture. If an immigration judge makes an affirmative determination, the alien will be granted an asylum hearing before an immigration judge. If the immigration judge finds that an individual does not have a credible fear, the individual will be subject to removal. The credible fear decision of the immigration judge is final and cannot be reviewed.

Detention

Aliens awaiting a credible fear interview are subject to INS detention. An alien may only be paroled from INS custody in the event of a medical emergency or for a legitimate law enforcement reason.

After an affirmative finding of credible fear, an alien may be released on parole. The district director with jurisdiction over the detention location has the exclusive discretion to grant the alien parole.

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.

Q - Hello my dad lives in New Jersey as an American citizen. I live in Toronto Canada as a Canadian along with my wife and 3 kids we are all Canadian citizens.

My dad sponsored me in March 1998 it was approved on July of 1998. Could you tell me the approximate time this kind of sponsorship takes?

Seeing my dad is American citizens will this speed up the process Is this 2nd or 3rd preference.

A - This is a third preference family case since you are the married child of a US citizen. I presume that your father was either a citizen at the time he filed for you or he became a citizen before you married. If not, your case could be in jeopardy. It is hard to estimate how long you still will have to wait, but my guess is that it will be at least two more years.

Q - I am here on H1 B visa and my spouse green card is on processing. her I 140 form is approved on last august. I would like to bring her here on H4 visa. Will it affect her current petition? or Will it disqualify H4?

A - Entering on an H-4 should have no impact whatsoever on her green card application. H-4s are "dual intent" visas anyway and permanent residency intentions are basically ignored.

Q - What is E2 visa?

A - This is a visa for investors who are investing a substantial amount in a commercial enterprise in the US. It is available to nationals of several dozen

countries that have commercial treaties with the US. You can find information on this visa category (including a list of covered countries) on our web site at <http://www.visalaw.com/00feb2/7feb200.html>.

Q - Can you please give me more information on REP GEPHARDT introduction to earned legalization and family unification legislation? Is this status in effect for illegal aliens.

Please let me know.

A - The law was called the DREAM Act and that is really an apt description. The bill really has no chance of passing any time in the near future. I would love to be wrong about that.

Q - I want to file for I-360 form as a religious worker. What are the requirements and how long it will take to process?

A - Expect the process to take about two years or more. You can learn more about religious worker immigrants on our web site at <http://www.visalaw.com/00oct3/12oct300.html>.

Q - I have a GC got same time as my husband, through his family. We entered the USA together on it before 1.5 years, we are totally married 5 years. Now he is divorcing me. Is my GC continuing to be valid?

A - Your green card should not be conditional based on the category in which you entered the US. So that would mean that a divorce would not affect your permanent residency status.

Q - My question is if new law help me? My mother is a permanent resident who applied for me on 01/15/1999 when I was 18 years old [DOB 02/06/1980], 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 old law I am in 2B category. Will new Aged out law help me?.Am i still in 2A category OR in 2B category.

A - The new age out law should 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.

Q - I had a H1B with employer A and I recently left and now work for employer B (who file for a new H1B transfer). While I was working for employer A, I went to my home country and got the visa stamp in my passport at the American embassy.

If I go back home do I need to get a new stamp in my visa or not?

A - You should not need a new visa stamp to reenter if the transfer has been approved. You can reenter with the new approval notice or at least the receipt notice for the new application if the application is still pending.

Q - My mother filed family-based 2b for me in September 1994. Now she has already become a US citizen and I am still unmarried. My question is: if I marry my girlfriend now, will my case be in the 3rd category? If so, will the priority date be the same - September 1994? Since the cutoff date is sometime in 1996 for 3rd preference, can we file I-485 now? And is there any difference in the processing time for I-485 between 1st preference and 3rd preference

A - There is good news here. Because you have not married, when your mother became a citizen, your case automatically converted to the Family First preference category. When you marry, your case will automatically convert to the Family 3rd preference category. Your priority date will continue to be September 1994. That means that you are eligible to apply now for your adjustment of status as would your future wife. Processing times should be the same for either 1st or 3rd preference.

Q - I am considering hiring an au pair and would need to arrange a J-1 visa for her, I was given your email address and told that you handle this sort of visa. What I need to find out is what is the process and cost associated?

A - You need to choose one of the au pair firms authorized by the State Department to sponsor au pairs. These firms handle the visa paperwork so you will not need our firm to assist.

You can find links to these firms at

<http://www.visalaw.com/immigrationresourceslinks.html>. There fees should be described at their sites.

Q- I am holding H1B Visa. Recently I visa got expired (25 Sept 2002) , but I have valid I94 till July 2003.

Now I want to go to Canada. People say that we can reenter US with expired visa, until I didn't applied for the visa stamping in Canada. My Country of Citizenship is

INDIA. Please advice me, whether it is ok to go to Canada on an expired H1 visa (Valid I94) and reenter US.

A - You should normally be able to reenter on the same I-94 as the one you had when you left. The main problem when you leave comes in if you apply for a new visa. That is not the case here.

Q - In order to reset my H1, I am planning to leave the States for a year and come back next year. I plan to get married with my boyfriend next year (he's filing for greencard but he's still in the labor cert. phase). I am concerned if I can get a H4 VISA to come back to the States as my parent is already filing petition (F2B class) for me (priority date 4/2001, still have a long time to wait). How long does it take for the H4 VISA to process?

A - The H-4 is a dual intent visa. That means that a permanent residency application will not have an adverse impact on getting and keeping the visa. You can secure an H-4 visa quickly in most cases. You simply apply directly at the US consulate along with proof that your spouse is maintaining H-1B status as well as proof of the marriage.

4. BORDER NEWS

Since the National Security Entry Exit System went into effect on September 11, 2002, 179 people have been arrested after being processed through the system. According to Attorney General John Ashcroft, those arrested fell into three categories: convicted felons who fled the US, people with serious criminal histories outside the US, and people attempting to enter the US under false pretenses. The NSEERS system targets nationals of Iran, Iraq, Libya, Syria and Sudan for additional screening, including fingerprinting and checking those prints against INS and FBI databases. However, the 179 people arrested were from 112 different countries. This is possible because the NSEERS rules allow INS inspectors to require anyone to submit to the additional background check, not only those from the five designated countries.

US fighter jets this week escorted a biplane carrying eight Cubans, including one child, as it landed at an airport in Key West, Florida.

The director fo the San Luis port of entry in Arizona was arrested this week on charges of bribery, possession of a controlled substance and misuse of immigration documents after FBI agents saw her trade four immigration documents for 30 vials of the prescription drug Temgesic, a painkiller. According to Lisa Stubbs' husband, she is addicted to the drug, but rules governing federal employees made it impossible for her to come forward and seek help.

In a recent interview, Sen. Trent Lott (R-MS), who is expected to be the Senate Majority Leader in the 108th Congress next year, expressed his support for the use of military troops in patrolling US borders. Many observers are concerned that the comments reflect what will be stronger anti-immigrant sentiments among the Republican Party following its victory in the recent elections.

A Border Patrol agent was placed on administration leave this week after firing his gun at a group of undocumented immigrants threw rocks at him while he attempted to stop another group of migrants. Placing agents on leave in situations like this is standard procedure while the agency conducted an internal review.

Two of the Haitian migrants detained after their dramatic landing in Miami late last month have been released on bond, but it is unlikely that any of the others will receive a similar benefit as the two released were pregnant women. Immigration judges approved bond for most of the other detainees, but the INS is appealing the decisions, meaning that the detainees will remain in INS custody. The INS has also instituted a new expedited removal policy that will apply to anyone arriving in the US by sea without documentation. While the announcement of the new policy was accompanied by statements that it is necessary for national security, many advocates believe it was implemented specifically to deflect criticism of the detention of Haitians. Significant migration from Haiti continues even as the US makes clear that it will continue detaining all undocumented Haitians. This week the Coast Guard announced that it intercepted two boats carrying 238 Haitians.

5. NEWS FROM THE COURTS

Renteria- Gonzalez v. INS, Fifth Circuit

Ricardo Renteria-Gonzalez, a citizen of Mexico, was granted temporary resident status after the 1986 amnesty. In 1989, he pled guilty to charges of transporting undocumented immigrants and was sentenced to six months in prison and three years on probation. The court also issued a recommendation against deportation. Despite this recommendation, the INS began deportation proceedings in 1990. The proceedings were based not on the conviction, but on the INS's claim that Renteria had unlawfully entered the US at the time of the transportation offense. Because Renteria's temporary resident status had not been revoked, the INS withdrew the notice of deportation, terminated his residency status. Renteria appealed this decision, which was reversed in 1992. He also successfully applied to the court that convicted him to have the conviction vacated.

In 1994, the INS again began deportation proceedings, this time both on Renteria's alleged unlawful entry and on the transportation conviction. An immigration judge found Renteria deportable, and he appealed to the Board of Immigration Appeals, which, after a seven year delay, affirmed the deportation. Renteria then appealed to the Fifth Circuit.

The court first addressed whether it had jurisdiction to review the deportation order.

Under the rules applicable in this case, which went into effect in 1996, federal courts cannot review final orders of deportation based on a number of criminal offenses, including the offense of which Renteria was convicted. The INS argued that this provision applied to Renteria even though his conviction occurred years before 1996. Renteria argued both that his conviction could not be considered an aggravated felony because it was not one when he was convicted, and that because the conviction was vacated, it could not be the basis for deportation.

The Fifth Circuit found that in vacating the criminal conviction, the district court had committed a number of errors, foremost among which was that it lacked the authority to do so. In vacating the conviction, the judge relied on the previous recommendation against deportation, but in 1990, Congress rescinded all such recommendations, regardless of when they were issued. However, the INS could not attack the validity of the vacation before the circuit court, which turned then to the INS argument that for immigration purposes, a vacated conviction carries the same weight as a conviction still on the books. The Fifth Circuit agreed with this argument, finding that the definition of "conviction" found in the Immigration and Nationality Act encompasses any formal, final finding of guilt, regardless of whether it is later vacated. The court found strong evidence for this position in the fact that Congress, in 1996, included a definition of conviction in the INA. What constituted a conviction for immigration purposes had been much litigated, and that Congress did not make an exception for vacated convictions was, the court found, proof that such convictions were not to be given special treatment.

The court then addressed whether the immigration transportation conviction was an aggravated felony and found that it was not. Because of when Renteria was placed in deportation proceedings, transitional rules adopted in the Illegal Immigration Reform and Immigrant Responsibility Act were in effect. Under these rules, the expanded definition of aggravated felony that was also adopted in IIRAIRA is not applied. The court then examined the disposition of Renteria's case and found that it was fair and that Renteria had no basis upon which to overturn the order of deportation against him.

The opinion is available online at
<http://caselaw.lp.findlaw.com/data2/circs/5th/0160364p.pdf>.

Reinforced Earth Company v. Workers' Compensation Appeal Board, Supreme Court of Pennsylvania

Juan Carlos Astudillo, an undocumented immigrant from Mexico, was injured on the job while working for the Reinforced Earth Company. He had secured employment by providing fraudulent immigration documents. Following his injury, he filed a claim for workers' compensation. At the hearing it was determined that Astudillo's undocumented status did not prevent him from receiving compensation, and thus granted him compensation. Reinforced Earth appealed, and the decision was affirmed. The company then appealed to state court, arguing that because Astudillo could not be legally employed in the US, he was not entitled to compensation. The court rejected this argument, and affirmed the award of compensation. Reinforced Earth then appealed to the state supreme court.

The company urged the court to create a public policy exception to rules governing workers' compensation to prevent undocumented workers from receiving it. The court, noting that courts are generally hesitant to base legal rules on "public policy" concerns, declined to impose such a rule.

The opinion is available online at <http://caselaw.lp.findlaw.com/data2/pennsylvaniaastatecases/supreme/j-113-2002oaj.pdf>.

6. GOVERNMENT PROCESSING TIMES

There were no new processing times this week. For the most recent times, go to <http://www.visalaw.com/processing.html>.

7. NEWS BYTES

This week the INS issued an updated version of the address change form, AR-11. The new form is available on the INS website at <http://www.ins.usdoj.gov/graphics/formsfee/forms/files/ar-11.pdf>. There is also a new address to which the forms should be sent: Immigration and Naturalization Service, Change of Address, P.O. Box 7134, London, KY 40742-7134.

A lawful permanent resident has filed suit against the Texas Department of Public Safety, claiming that the agency unlawfully seized his immigration papers and held them for more than three months, claiming they were fraudulent. According to the lawyer representing Juan Pozo, the incident is part of a pattern of increased scrutiny of Hispanic applicants for driver's licenses since the terrorist attacks on September 11, 2002.

This week began with Veterans Day, the annual commemoration of the contributions of those who have served in the US military. Over the past few years, the military has become increasingly reliant on noncitizens to maintain a strong force. Today, about 31,000 of the 1.4 million military personnel are permanent residents. An even higher percentage of Medal of Honor winners have been noncitizens – about one in every five of the 3,459 winners of the award, which recognizes exceptional bravery in combat.

This week the AFL-CIO, America's largest labor union, announced that it had filed a complaint with the International Labor Organization to protest a Supreme Court decision significantly limiting the remedies available to undocumented workers who are the victim of unlawful employment practices. According to the complaint, the decision in Hoffman Plastic Compounds v. National Labor Relations Board violates international treaties on the rights of workers by rewarding those employers who violate laws against employment of undocumented immigrants and by penalizing

workers who exercise right to join a union, which is guaranteed both by US law and by international treaty. It will likely be at least a year before the ILO hears the complaint, and even then the possible remedies are limited to a formal complaint to the US government. A summary of the Supreme Court opinion is available at <http://www.visalaw.com/02mar5/2mar502.html>, and the opinion itself is available at <http://www.supremecourtus.gov/opinions/01pdf/00-1595.pdf>.

In the months since the September 11th terrorist attacks, the US government has cracked down on noncitizens in a variety of ways. One of these ways has been to target immigrants who use money transfer services to send funds to family members outside the US. Many companies providing this service have been accused of providing funds to terrorists, and now those who seek to send money home must be checked against government lists of suspected terrorists. Many immigrants who use such transfer services are undocumented, and the new regulation of the industry will make many hesitant to continue sending money home. Each year, immigrants in the US send about \$30 billion to family members outside of the US.

According to a recent survey by the National Association of State Universities and Land-Grant Colleges, the number of international students enrolled at US institutions of higher education has increased in the year since the September 11th terrorist attacks, despite tighter visa scrutiny. The survey of 50 public universities shows that undergraduate enrollment increased by 1.4 percent, while enrollment of graduate students increased by 7.1 percent. Despite the increase in enrollment, reports of lengthy delays in visa processing were widespread, as were problems with other government agencies, such as the Social Security Administration.

This week the US Senate approved the nomination of Tony Garza to be the new US Ambassador to Mexico. During his confirmation Garza expressed hope that immigration reform talks between the US and Mexico would soon return to the level of prominence they had before the terrorist attacks. Garza also expressed support for an extension of Section 245(i).

Opponents of the new requirement that airport baggage screeners be US citizens won an important step in their court battle this week when a federal judge refused to throw the case out of court. The judge rejected both the government's arguments – that the requirement was authorized as part of Congress's control over immigration and that it was authorized because baggage screeners are comparable to police officers, who are legitimately required to be citizens. Despite the ruling, because the new rule is set to go into effect nationwide next week, and most noncitizens are expected to lose their jobs.

This INS has suspended five employees as part of an internal investigation into how a man believed to have ties of the terrorist organization Hezbollah obtained US

citizenship. According to unnamed INS sources, those suspended include the senior officer in charge of investigations in New York and a supervisor for cases involving suspected terrorists. Officials say the investigation began last month after a joint FBI-New York City police terrorism task force noticed that a person they were investigating had been naturalized.

The United Nations High Commission on Refugees recently released its first annual report on the world refugee situation. The report is available online at <http://www.unhcr.ch/cgi-bin/texis/vtx/template/+RwLFqv5BwBo5Boq5eUj5cTPeUzknwBoqeRzknwBo5Boqwce6lxxwGxddAeRyBDXWeRDImqeIybnM>.

8. INTERNATIONAL ROUNDUP

Belarus President Threatens Europe With Flood Of Illegal Immigrants

President Alexander Lukashenko of Belarus, who has thus far not been approved for a visa to attend the NATO summit in Prague next week, is threatening to flood Europe with illegal immigrants if he is refused entry. Diplomats from NATO, an organization Lukashenko once called a "terrible monster," have said he would not be welcome at the summit, and the Czech Republic has declined to grant him a visa.

"We will react immediately and in the most severe fashion," Lukashenko said.

Regarded as Europe's last dictator, Lukashenko is reviled in both Russia and the West. International observers have claimed his re-election in 2001 was fraudulent.

Pakistan: Afghan Refugees Defraud U.N. Repatriation Assistance Program

According to the findings of an investigation last week, thousands of Afghan refugees have defrauded the United Nations of millions of dollars in repatriation allowances. Officials claim almost a third of the refugees who left a station in Peshawar have traveled to Afghanistan after receiving their allotted money and provisions, only to double back into Pakistan seeking more benefits.

Some refugees have crossed the border as many as 10 times since repatriation began in March, and others have hired women and children to act as family members, thus increasing the benefits they received. Now the UNHCR has introduced eye-recognition technology to catch the so-called "recyclers."

For some, the long distance traveled on foot is well worth the reward of around \$80 after expenses, roughly equal to a month's wages.

In Australia, 500 Afghans will begin leaving Nauru, after accepting the Government's cash offer of \$2,000 for each individual and up to \$10,000 for a family.

France: Police Storm Calais Church, Evict 100 Asylum Seekers

Just after 5 a.m. on Thursday, French riot police stormed a church in Calais, ending a five-day occupation by up to 100 asylum seekers. The raid caught most inside asleep. The refugees living there had been threatening to set themselves on fire unless they were given permission to enter the Sangatte refugee camp.

Despite Sangatte having closed its doors to new arrivals last week as part of a crackdown on people smugglers operating there, refugees continued to head for the camp, regarding it as a first step to a new life in Britain.

The police action was a success for France's conservative government, which had been treading a fine line between trying to send a firm message and not risking bloodshed.

9. CANADIAN CORNER

NEW CANADIAN CITIZENSHIP LAW

The Minister of Citizenship & Immigration tabled a new citizenship bill in the House of Commons. The highlights of the proposed legislation are that:

1. a permanent resident must be physically present in Canada for a total of three years out of the six years immediately prior to applying for Canadian citizenship
2. a stricter definition of "physically" present will be applied
3. a fully judicial process be instituted under which a judge would decide if an individual's citizenship should be revoked
4. new powers granted to the minister to revoke citizenship obtained through the use of false identity
5. the Governor-in-Council will be able to refuse citizenship in those rare cases where a person demonstrates a flagrant disregard for Canadian values
6. Children born abroad to Canadian parents would continue to acquire Canadian citizenship automatically in the 1st and 2nd generations. However, a 2nd generation children would lose their citizenship at the age of 28 unless they have resided in Canada for three of the six year preceding their application for retention. Individuals in subsequent generations would need to obtain Canadian landed status and then seek Citizenship naturalization in Canada in the same manner as other immigrants to Canada.
7. Children adopted abroad by Canadians become citizens without having to enter Canada as permanent residents and apply for citizenship
8. Changing the Canadian oath of citizenship

The proposed bill must first receive royal assent before becoming law and replacing the old Citizenship laws, which dates back to 1977.

If you have any questions about Canadian Immigration laws please contact Leonard Pearl at our Canadian office (lpearlvisalaw@sprint.ca or 905-764-8767).

10. MAJOR IMMIGRATION CHANGES FOUND IN HOUSE-APPROVED HOMELAND SECURITY BILL

Congress came back for a lame duck session after the elections earlier this month, and immediately went to work on passing a Homeland Security bill. The House of Representatives passed the bill by a 299 to 121 vote this week, and the Senate is expected to act on the legislation as early as next week.

The bill contains significant immigration provisions, including the abolishment of the INS. Also, the new Department of Homeland Security would have exclusive authority to both issue regulations and provide enforcement on the issuance of visas and parole into the US. Agents from the Homeland Security Department would be stationed at US consulates, but consulates would still be managed by the State Department.

Information about applicants who are denied a visa would be placed in a database, and future applications would not be approved unless the prior denial is examined and taken into account.

The INS would be transformed into two agencies, a Bureau of Border Security, which would encompass the Border Patrol, investigations, inspections and intelligence, and a Bureau of Citizenship and Immigration Services, which would perform services currently done by the INS. A new Office of Citizenship would be created to promote acquisition of US citizenship. Numerous provisions to improve processing are found in the bill, including the creation of an ombudsman, programs to eliminate backlogs, and regular reporting requirements. The two new agencies would be linked by an Office of Shared Services, which would be responsible for coordinating resources and information.

The Senate is likely to pass the measure with few changes. The text of the bill as passed by the House is available online at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_bills&docid=f:h5710eh.txt.pdf.

11. INS EXPANDS EXPEDITED REMOVAL PROGRAM

On November 13, 2002, the Immigration and Naturalization Service issued new regulations concerning the expedited removal of certain aliens who arrive in the United States illegally by sea. An individual shall be subject to these new regulations if the alien satisfies the following requirements:

- 1) Arriving in the United States by sea, either by boat or other means;
- 2) Not being admitted or paroled at the time of arrival; AND
- 3) Having not been physically present in the United States for a continuous two-year period prior to an expedited removal determination of inadmissibility.

The expedited removal process for individuals subject to the new regulations will be very similar to the expedited removal process implemented on April 1, 1997. The principal difference involves aliens claiming to have been present in the United States for a two-year period. In order to terminate the expedited removal process, these aliens have the burden of illustrating to an INS officer that they have been present in the United States for the two-year period.

Of particular note, the new regulations include a specific provision for Cuban citizens or nationals. The new regulations state that the expedited removal provisions shall

not be applied to Cubans who arrive in the United States by sea, which means that they will still be able to apply for adjustment of status under the Cuban Adjustment Act.

12. STATE DEPARTMENT VISA BULLETIN – DECEMBER 2002

Priority Dates for Family Based Immigrant Visas			
	All Chargeability Areas Except Those Listed	MEXICO	PHILIPPINES
Family			
1st	08APR99	15OCT92	01APR90
2A*	22SEP97	08APR95	22SEP97
2B	08APR94	01NOV91	08APR94
3rd	22DEC96	01NOV92	01DEC89
4th	08DEC90	01NOV90	01DEC81

Priority Dates for Employment-Based Immigrant Visas				
	All Chargeability Areas Except Those Listed	INDIA	MEXICO	PHILIPPINES
Employment-Based				
1st	C	C	C	C
2nd	C	C	C	C
3rd	C	C	C	C
Other Workers	C	C	C	C
4th	C	C	C	C
Certain Religious Workers	C	C	C	C

5th	C	C	C	C
Targeted Employment Areas/Regional Centers	C	C	C	C

DV NUMBERS FOR DECEMBER

Region	All DV Chargeability Areas Except Those Listed Separately	
Africa	9,800	
Asia	4,075	
Europe	15,850	
North America (Bahamas)	10	
Oceania	200	
SOUTH AMERICA, CENTRAL AMERICA, and the CARIBBEAN	6256	

ADVANCE NOTIFICATION OF RANK CUT-OFFS THAT WILL APPLY IN JANUARY

Region	All DV Chargeability Areas Except Those Listed Separately	
Africa	11,500	
Asia	3,300	Bangladesh 5,060
Europe	18,000	
North America (Bahamas)	11	
Oceania	256	

SOUTH AMERICA, CENTRAL AMERICA, and the CARIBBEAN	700	
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13. LEGISLATIVE UPDATE

It is now known that Rep. James Sensenbrenner (R-WI) will remain Chair of the House Judiciary Committee, and Rep. John Conyers (D-MI) will remain the ranking minority member. Rep. Chris Cannon (R-UT) appears to be the front runner to chair the House Immigration Subcommittee, but other names being discussed include Reps. Elton Gallegly (R-CA), Bob Goodlatte (R-VA), and Bill Jenkins (R-TN).

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