

SISKIND'S IMMIGRATION BULLETIN  
November 22, 2002

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Canada and the People's Republic of China. To schedule a telephone or in-person  
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Adult and/or Child Psychiatrist needed for the northeast Arkansas community of  
Jonesboro (52,000 pop.), and the east central community of Forrest City (12,000  
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1. OPENERS

Dear Readers:

Security figures prominently in this week's newsletter as has been the case for most of our issues since 9/11. This week we report on several new countries being added to the Special Registration list that requires certain people to be fingerprinted and photographed upon entry to the US and to report periodically to a local INS office. We also report on new security procedures in place at INS field offices that are causing confusion relating to the issuance of employment and travel documents. Furthermore, we include coverage of a new General Accounting Office report that considers the question of whether we can have a Visa Waiver program that properly addresses security issues and, if not, what the costs to the country would be if the program were killed.

This security theme is one that is now a permanent fixture of the American immigration system. Is this appropriate? Undoubtedly. Faults in the US immigration system were undoubtedly to blame - at least partially - for the attacks on September 11th. And Americans' mistrust of the security of the US immigration system places the whole system in jeopardy. Until Americans feel that our US immigration system is sufficiently secure, immigration advocates hoping for a further opening up of the system will need to keep waiting.

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

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## 2. THE ABC'S OF IMMIGRATION – HOW WILL THE HOMELAND SECURITY DEPARTMENT IMPACT IMMIGRATION?

The creation of the Department of Homeland Security will be the largest government reorganization since the Defense Department was created in 1947. The Department will include 170,000 employees from 22 agencies and will be charged with strengthening the country's defense against terrorism. Once the president signs the Department of Homeland Security bill, which is expected shortly, the administration will have 60 days to organize the creation of the Department and approximately a year to complete the transition.

As part of the transition, the INS, which was originally created in 1891, shall be abolished. The present duties of the INS will be divided into two new bureaus. INS inspectors, the Border Patrol, and detention and removal functions will become part of the new Bureau of Border and Transportation Security. Service functions, such as applications for citizenship, permanent residency, and asylum, will be the duty of the Bureau of Citizenship and Immigration Services. Each of these bureaus will report directly to the Deputy Secretary for Homeland Security.

Many individuals believe that the creation of the Department of Homeland Security marks a significant step in protecting the borders of our country. Regarding immigration matters, the perception is that dividing the former INS into enforcement and service bureaus will greatly enhance communication and effectiveness. However,

some immigration advocates worry that the United States is now breaking from its tradition of welcoming immigrants and shall now view all individuals as potential terrorists. Many advocates also fear that the new Bureau of Border and Transportation Security will overshadow the Bureau of Citizenship and Immigration Services. The belief is that matters such as asylum cases will become of secondary importance in comparison to anti-terrorism measures.

One current function of the INS that will not be transferred to the new Department of Homeland Security will be the care and custody of unaccompanied minors. This responsibility will now be transferred to the Department of Health and Human Services and its Office of Refugee Resettlement.

Of note, two significant immigration departments will not be included in this major reorganization. The Executive Office for Immigration Review, which includes the Board of Immigration Appeals and the nation's Immigration Judges, will remain part of the Department of Justice. Additionally, the Bureau of Consular Affairs will continue to issue visas as part of the Department of State. However, the new Department of Homeland Security will have authority to reverse the visa grants issued by the consulates.

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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 am a German national with a green card (from 1986) who lived and worked in the US from 1984 - 2001. I am currently working in Germany for a US firm. The company would like to transfer me to the German subsidiary. I left the US in Aug 2001 and will return in fall 2003 at the earliest. I was in the US in July 2002 for 5 weeks and again in Nov 2002 for one week. A reentry permit has been filed in July 2002 but not yet approved. I filed 2001 US taxes and own property in the US since Sept 2002. Will I jeopardize my green card by transferring to the German subsidiary?

Working abroad for a US company is helpful, but there are other things you can do. I've written an article which is online at <http://www.visalaw.com/01jan4/12jan401.html> that you may find helpful.

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I would appreciate one quick answer if you have time. Can you let me know the legal requirements for applying for a prospective student B-2 visa?

There are no special requirements that are different than a normal B-2 visa. But you would want to show strong ties to your home country and adequate funds to pay for your studies. You should also be prepared to show that the course of study in which

you will engage in the US will advance your career prospects when you head home when all is finished.

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Someone told me that there is a new law that may expedite the processing time for dependents who were under the age of 21 when their permanent resident parents applied for them. In other words, those that were class 2A and after 21 became 2B.

We've written a great deal about this law. An article on our web site that may be helpful to you can be found at <http://www.visalaw.com/02jul4/12jul402.html>.

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I am 26 yrs old, female. You can call me Isa. I was naturalized last July 4, 2002 and am now a US citizen. Can I petition for my mother who has been overstaying here in the US for 10 yrs now? She entered the country legally as a tourist 10 yrs ago. Is there a law that would allow me to file a petition for her anytime now?

Yes, she should be able to pursue a green card under Section 245(a) since she is the parent of a US citizen and she entered legally.

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#### 4. BORDER NEWS

Six Haitian men have pled not guilty to charges of immigrant smuggling in connection with the recent dramatic landing of more than 200 Haitians in Miami. Prosecutors say the men were driven by profit, while attorneys for the defendants argue there was no profit motive, and that they were simply attempting to make it to the US.

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The mother of Lee Boyd Malvo, one of the suspects in the recent Washington, D.C. area sniper attacks, has been ordered deported. Details about how Una James and her son arrived in the US are not clear, with conflicting reports claiming either entry as stowaways or the use of fraudulent documents. Some observers doubt James will fight her deportation, instead choosing to be home during her son's trial.

\*\*\*\*\*

The city council of Douglas, Arizona this week passed a resolution condemning recent calls for vigilante actions to defend the border with Mexico. Douglas, which sits across the border from the Mexican town of Agua Prieta, has become a focal point for border issues because it has seen dramatic increases in the number of undocumented crossers as crackdowns occur in more urbanized border areas. Douglas Mayor Ray Borane criticized calls for vigilantism, observing that most of the people in the area are Hispanic, and wondering how self-appointed border agents would be able to tell whether a person is legally entitled to be in the US.

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President Bush this week signed an executive order outlining the responsibilities of various federal agencies in dealing with potential mass migration from the Caribbean. Under the order, the Justice Department will be responsible for screening migrants as well as their custody. Those migrants who are allowed to enter the US would be in the care of the State Department, and the Defense Department would be responsible for housing migrants not allowed to enter the US at the Guantanamo Bay naval base in Cuba.

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Officials investigating the tragedy in which 11 Mexican nationals died after being locked in a railroad car and never released believe they know the identity of the smuggler responsible for helping them enter the US. Rogelio Hernandez is believed to have been a human smuggler for the past twenty years

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A long time Border Patrol agent was found guilty of immigrant smuggling this week. Steven Flores was arrested in June after attempting to enter the US at the San Ysidro port of entry with two undocumented immigrants in his car. Flores' wife, who was with him at the time, confessed that she asked her husband to drive the immigrants to the US after being told she would be paid \$500. Flores faces up to three years in prison.

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## 5. NEWS FROM THE COURTS

### US v. Couto, Second Circuit

Ivania Couto, a citizen of Brazil, was convicted in federal court of bribing a public official. She appealed, arguing that she did not receive effective assistance from her attorney, that the court had erred in not allowing her to withdraw a guilty plea, and that the court had erred in failing to warn her of the immigration consequences of the guilty plea.

Couto had come to the US in 1991 on a tourist visa. Shortly afterward, she gave birth to a son, and remained in the US after her visa expired. She married a US citizen and applied for adjustment of status, but before the application was granted, the marriage was annulled. In 2000, Couto, along with many others, was indicted on charges of conspiracy and bribery. Couto was accused of attempted to buy a green card from an INS agent for \$9,500. She retained an attorney and entered a plea of not guilty. She claimed that she had been approached by a man claiming to be an attorney who offered to help her with the adjustment application. They met with an INS official who stamped her passport with an indication that she was a permanent resident. A few months later, she was arrested, along with the man who claimed to be an attorney.

Relying on the advise of the criminal defense attorney, she did not object to the INS canceling her adjustment application. The attorney arranged for her to enter a guilty plea, telling her that she would likely be convicted and face jail time if she went to trial, and could avoid jail time be pleading guilty, as well as possibly avoid deportation. During the hearing, the possible immigration consequences of the

conviction were never mentioned. Prior to the sentencing hearing, Couto retained a new attorney, who filed a motion requesting that the guilty plea be withdrawn. The motion was denied, with the judge reasoning that there is no requirement that a criminal attorney advise someone of the possible immigration consequences of a criminal conviction. Couto then appealed.

The Second Circuit found that the court erred in not allowing Couto to withdraw the guilty plea. First, at no point did Couto ever really acknowledge guilt, instead only confirming that events occurred as the government stated. Second, the court found that the trial court had failed to adequately consider all the evidence presented, and had instead simply made assumptions about the case against Couto. The court found that the denial of the motion to withdraw should not only be vacated, but that the motion itself should have been granted. This was based on the fact that a guilty plea must be entered knowingly and voluntarily. The court found that because Couto did not receive effective assistance of counsel, because of the attorney's incorrect statements about the possible immigration consequences of a guilty plea, her plea was neither knowing nor voluntary.

The opinion is available online at <http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=2nd&navby=case&no=011636>.

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#### US v. Caicedo-Cuero, Fifth Circuit

Jesus Martin Caicedo-Cuero, a citizen of Colombia, was convicted of unlawful reentry to the US following deportation. He had been deported because of a conviction in Texas state court in 1995 for marijuana possession. At the time, the offense was punishable by up to two years in prison, but state law required that for first offenders the jail sentence be suspended in favor of probation. During his trial for unlawful reentry, the government argued that the 1995 conviction was an aggravated felony and that Caicedo's sentence should therefore be enhanced. The judge disagreed and enhanced Caicedo's sentence. Caicedo then appealed.

On appeal, Caicedo argued that his 1995 conviction was not an aggravated felony for two reasons. First, because he could not have received a prison sentence of at least a year, and second because a conviction of simple possession was not a drug trafficking crime. The Fifth Circuit rejected this argument, finding that the imposition of probation rather than jail time for first offenders was not a reflection of the perceived seriousness of the offense, but of the need to relieve prison overcrowding. The court also rejected Caicedo's argument that his marijuana possession offense was not a drug trafficking crime.

This is an important decision, as it is the first in which a circuit court has ruled that simple marijuana possession is a drug trafficking offense. While the court was dealing with the US Sentencing Guidelines, not the Immigration and Nationality Act,

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## 6. GOVERNMENT PROCESSING TIMES

### **California Service Center Processing Times**

Jurisdiction: Arizona, California, Hawaii and Nevada.  
(Just In Time Report)

11/05/02

| Form              | We are Processing cases with these receipt notice dates: |
|-------------------|--|
| I-90              | 2/25/02  |
| I-102             | 5/17/02  |
| I-129 / H1B       | 5/31/02  |
| I-129 / H2A       | 11/5/02  |
| I-129 / H2B       | 8/24/02  |
| I-129 / H3        | 9/24/02  |
| I-129 / L         | 9/26/02  |
| I-129 / Blanket L | 9/26/02  |
| I-129 / O         | 6/24/02  |
| I-129 / P         | 6/24/02  |
| I-129 / Q or R    | 5/3/02   |
| I-129F            | 9/30/02  |
| I-130 / IR        | 4/16/02  |
| I-130 / F1        | 4/16/01  |
| I-130 / F4        | 4/2/98   |
| I-130 / F-2A      | 1/2/98   |
| I-130 / F3        | 1/2/98   |
| I-131             | 10/1/02  |
| I-140 A           | 7/25/02  |
| I-140 B           | 7/31/02  |
| I-140 C           | 9/27/02  |
| I-140 D           | 8/29/02  |
| I-140 E           | 9/8/02   |
| I-140 I           | 7/22/02  |
| I-140 G           | 9/20/02  |

|   |          |
|---|----------|
| I-212   | 1/2/02   |
| I-360   | 4/15/02  |
| I-485 Employment-based                                    | 10/19/01 |
| I-539   | 10/7/02  |
| I-612   | 11/5/02  |
| I -751  | 6/5/02   |
| I-765 / asylee  | 8/1/02   |
| I-765 / Hurricane Mitch<br>TPS                            | 8/1/02   |
| I-765 / El Salvador TPS                                   | 8/1/02   |
| I-765 / (c)(9)  | 8/1/02   |
| I-765 / other   | 8/1/02   |
| I-817   | 6/14/02  |
| I-821 / El Salvador                                       | 8/1/02   |
| I-821 / Hurricane Mitch<br>countries                      | 8/1/02   |
| I-824   | 3/27/02  |
| I-829 Petition by<br>Entrepreneur to Remove<br>Conditions | 10/31/00 |

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

The United Nations High Commission on Refugees has asked the Bush administration to grant Temporary Protected Status to citizens and nationals of Colombia residing in the US. Advocates say that not only does the decades-long civil war that shows no sign of ending, the country is enveloped in a serious humanitarian crisis with random violence permeating all areas of the country.

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Officials in Florida recently raided a series of gift shops believed to be engaged in money laundering, dealing in fraudulent immigration documents, and employing undocumented immigrants. Five people, all owners of the raided businesses, have been indicted, primarily on charges of employing people unauthorized to work in the

US.

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This week the US Circuit Court of Appeals for the District of Columbia heard arguments in a case seeking to end the government's practice of withholding the names of those immigrants who were detained in connection with the investigation into the terrorist attacks on September 11, 2001. While most of the more than 1,200 people detained have been released and deported, experts estimate that more than 30 people remain in detention. A trial court earlier rejected the government's argument that releasing the information would compromise the investigation.

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The outgoing US ambassador to Mexico, Jeffrey Davidow, recently warned that by continuing to push for major immigration reform, the Mexican government is risking alienating the US and possibly doing long term damage to relations between the two countries. However, a White House spokesperson recently said that the US remains committed to working with Mexico on migration issues.

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Twenty-one workers at the Newark Liberty International Airport have been accused of using fraudulent immigration documents to secure jobs that allowed them access to restricted security areas, according to officials who completed a background check. Officials say that while the workers will be prosecuted, there is no suspicion that any of them had terrorist connections.

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A federal judge recently ruled that the law requiring all airport baggage screeners to be US citizens is unconstitutional and issued an injunction against the enforcement of the law. The Justice Department maintains that the ruling applies only to the workers who were plaintiffs in the case, and not to any of the other estimated 8,000 people who will lose their jobs because of the law, which went into effect this week.

\*\*\*\*\*

The Center for Immigration Studies, a research organization favoring reduced immigration, recently issued a report blaming the Internal Revenue Service for making it easy for undocumented immigrants to work in the US. The IRS will issue a federal taxpayer identification number to anyone who asks, because it wants to collect taxes from as many people as possible. According to CIS, undocumented immigrants take this number and use it to obtain other official documents. They say that since September 11<sup>th</sup>, the goal of collecting taxes should be subordinated to tax collection. Immigrant advocates say that it should be possible for immigrants who want to pay taxes to do so, even if they are undocumented. The report is available online at <http://www.cis.org/articles/2002/back1202.pdf>.

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It was recently revealed that Iraqis living in the US have been targeted for special surveillance in an effort to uncover terrorist organizations in the US. Many Iraqis find

this an odd use of resources, arguing that there are few groups more opposed to Saddam Hussein than those who have fled his dictatorship.

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Three contractors who provided labor to citrus growers were sentenced to 12 years in prison this week. They had been convicted last summer on charges that they enslaved undocumented immigrants and forced them to work.

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This week saw a number of arrests at airports as officials continue to try to ensure that workers with security clearances are authorized to work in the US. At the Dallas-Fort Worth International Airport, 63 people were arrested for misusing Social Security numbers, and another 53 were arrested for immigration violations. At airports in the New York City area, 118 people were arrested. Since Operation Tarmac began nearly a year ago, about 800 people have been arrested. None of them have had any links to terrorism.

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According to a new report from the General Accounting Office, the INS has been unable to locate more than half of the 4,000 people the government sought to interview about the September 11 terrorist attacks. The apparent reason for this is the failure in the past to enforce the requirement that nonimmigrants keep the INS informed of their current address. Because the INS lacks the resources to prosecute people who fail to comply, in comments to the report the Justice Department suggested increasing the penalties for noncompliance. The report is available online at <http://www.gao.gov/cgi-bin/getrpt?gao-03-188>.

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## 8. INTERNATIONAL ROUNDUP

Canada: New Immigration Law, 9-11 blamed for Refugee Gridlock

Canada's Immigration Refugee Board points to the September 11 terrorist attacks and the new immigration law that followed to explain its backlog, which has ballooned to a record 51,929 cases.

In his annual performance report, IRB chairman Peter Showler writes that the number of refugee claims reached unprecedented levels this year, "surpassing all forecasts and resulting in an unavoidable backlog."

Showler said increased security measures in the wake of September 11, combined with the challenge of bringing staff up to speed on the new Immigration and Refugee Protection Act, slowed down the process.

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## Asylum Seekers Expelled Last Week Headed Back To Calais

Sources say many of the asylum-seekers expelled from a Calais church last week and moved other parts of France are already headed back to the Channel coast. Although most agreed verbally to seek asylum in France, very few have actually done so, abandoning the right to seek asylum in Britain.

Thirteen refugees who were taken to the small town Joué-les-Tours left the shelter immediately upon arrival, saying that they were going shopping. They did not return, and are believed to have made their way back to Calais. Similar stories were reported in other towns.

French and British authorities predict that the flow of new arrivals at the Channel coast will soon dry up, once news is spread of the new British immigration law and the renewed firmness of French police.

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## 9. CANADIAN CORNER

### **CANADA AND THE PROVINCE OF SASKATCHEWAN SIGN IMMIGRATION AGREEMENT**

The Minister of Citizenship and Immigration Canada, and Saskatchewan's Minister of Government Relations, have signed a new agreement on the Saskatchewan Immigrant Nominee Program.

The five-year Canada-Saskatchewan Agreement on Provincial Nominees, replaces an earlier pilot agreement, allows Saskatchewan to nominate up to 200 economic immigrants each year.

Saskatchewan will nominate potential immigrants depending on their ability to contribute to the provincial economy and their likelihood of successful settlement. Canada will remain responsible for issuing immigrant visas to provincial nominees and their accompanying dependants after they have met all legislative requirements.

The Government of Canada has provincial nominee agreements with Newfoundland and Labrador, Prince Edward Island, Nova Scotia, New Brunswick, Manitoba, British Columbia, Alberta and Yukon.

### **CANADA AND MANITOBA RENEW IMMIGRATION AGREEMENT**

The Minister of Citizenship and Immigration Canada, and the Manitoba Minister of Labour and Immigration, agreed to extend the Canada-Manitoba Immigration Agreement until October 22, 2003.

A highlight of the renewed agreement is an amendment to increase the allocation under the Provincial Nominee Program. It allows Manitoba to identify and nominate individuals with the potential to provide significant economic benefits to the province.

"Since its inception, the Provincial Nominee Program has been an important tool in recruiting and retaining skilled immigrants," noted Minister Barrett. "Canada and Manitoba have now agreed to an annual allocation of 1,500 nominees, plus their

accompanying family members. This is a considerable increase from the original 200 allotted in 1998."

### **MILITARY AT THE US CANADIAN BORDER**

Senator Trent Lott who will chair the US senate in the next Congress has called for militarization of the US and Canadian borders.

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

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### 10. INS ADDS MORE COUNTRIES TO SPECIAL REGISTRATION LIST

This week the INS added nine more countries to the list required for special registration, bringing the total to 14. The new countries are Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morocco, North Korea, Oman, Qatar, Somalia, Tunisia, United Arab Emirates and Yemen.

Only males born on or before December 2, 1986 who entered the US in nonimmigrant status on or before September 30, 2002 are required to register. Lawful permanent residents are not required to register, nor are people who have been granted asylum. People who have asylum applications pending on or before November 22, 2002 are not required to register, but those with an asylum claim filed after that day will be. Nonimmigrants in the US as diplomats or employees of a foreign government or international nongovernmental organization are not required to register.

Those subject to special registration under this rule must report to a designated INS office on or before January 10, 2002. They must present their passport, visa and other immigration documents, as well as evidence that they are working or studying in accordance with their nonimmigrant visa. They must also present proof that they are residing in the US. They will be fingerprinted and photographed, and must provide any additional information the INS requests. Each year the person remains in the US they will be required to reregister.

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### 11. GUEST COMMENTARY – COME BACK TO AMERICA: ALIENATION AND IMMIGRATION ADVOCACY, BY GARY ENDELMAN

Hindsight being 20-20, what have we learned from the recent mid-term elections besides the obvious? Bush is up and the Democrats are down. Is that it? Looking a bit deeper, we can see more clearly than ever before that politics is about culture—the ideas and beliefs that determine how most Americans think and act. In the end, the Democrats lost for the same reason that advocates of a more pro-immigrant posture are losing, namely that they have fundamentally lost touch with a majority culture they neither like nor understand.

In a stunningly insightful essay in this past Friday's Wall Street Journal entitled "Democrats Need To Rejoin America," Daniel Henninger went straight to the heart of the matter:

The first cultural contradiction of the Democrats is their alienation from the real economy. Democrats participate in the economy as lawyers, investment bankers, doctors, teachers and the like. Somehow, it's supposed to be more than mere workaday money-grubbing. But there is one career that would never enter the mind of most Democrats: Spend it working for Procter & Gamble. They'd go homeless before toiling as a middle manager at Procter & Gamble, which is "out there" somewhere. But this is what most Americans do, at thousands upon thousands of such companies spread from Pennsylvania to the border of California. No matter; in the Democratic Zeigist, it's all simply "corporate America," an alien blob of marketing types who have something to do with creating Wal-Mart and other strange stuff... These Americans don't live in the average Democratic mind as anything real; they're pod people who cause "sprawl." In the election they just lost, Democrats demonized for months, then ran against "the Enrons and the WorldComs"--as if resentment of corporate logos would get voters to the polls. At least in the old days, the progressives railed against the Robber Barons, men with names. But with the decline of industrial unions, cultural Democrats have lost any affinity whatsoever for this swath of American society, which they've reduced to an economic abstraction. It's the most natural thing in the world for a candidate like Al Gore, or hundreds like him, to rant about "big energy companies, big drug companies and corporate polluters." But showing themselves so viscerally hostile to the real economy has had an effect. Younger people coming out of college who might once have considered themselves natural Democrats now often claim to be "libertarians." Essentially, this means they don't see the private sector as their mortal political enemy.

But, the sad truth is that many pro-immigrant advocates do see the private sector, and the culture of capitalism, in precisely this sinister light. They reject the profit motive and distrust the American economy. They see immigration policy, in its purest form, as international social work divorced from the grubby pursuit of national objectives. If, in the course of uplifting the dispossessed and the downtrodden from other lands, most of whose misfortune can ultimately be traced back to transnational corporate elites, America benefits, then all the better. Yet, it is the individual immigrant who always remains center stage as the reason for it all. They see no interest in using immigration to grow the economy, no sense in which national enrichment emerges as a unifying theme. Indeed, the very idea of trusting the market and embracing the profit motive seems inherently immoral, unworthy of true commitment or sincere belief. Pro-immigrant advocates believe that to be successful, to retain its soul, US immigration policy must be immune to the corrupt tendencies of national chauvinism. Making the United States more powerful, enabling employers to make more money, extending the reaches of our influence even further, should never be the goal of any immigration initiative.

This rejection of the application of immigration policy as a core strategy to expand wealth and enlarge economic opportunity has its consequences. It means that you must sacrifice planning for the future, forget about making tomorrow better than today, and focus solely on shoring up the present against the winds of change. In

essence, it is a profoundly conservative mind set with disastrous consequences for US immigration. Once we write-off tomorrow and practice the zero-sum gain politics of rearranging the pie that now exists to the exclusion of all else, we play on the anti-immigrant's turf. It is his game played by his rules. It is game that those who want a more expansive and enlightened immigration policy can never win.

The nativists want the American public to perceive cheap foreign labor as public enemy number one. Yet, even if true, such a phenomenon is no longer a center stage issue in the new world of global competitiveness. In order to strengthen the US economy on which we all depend, the focus of US immigration policy should be to attract and retain essential workers for a wide variety of jobs in both the old and new economies. While opponents of employment-based immigration continue to worry about low wages for foreign workers who manage to get and stay here, the real prize, as Peter Drucker reminded us in his book on Management Challenges for the 21st Century, is productivity. Any labor control mechanism must be grounded on that. Greater spending on new technology that results in a sustained level of worker productivity is the single most important factor that will spur economic growth without reigniting the fires of inflation. Rather than imposing more severe roadblocks to employment-based immigration, pro-immigrant advocates should lobby Congress to support more immigration. Protection of US workers is most fully achieved not when current jobs are protected, an impossible task in any case, but when new ones are created. Properly understood, such protection should not prevent employment-based immigration but make it more possible and rewarding for all segments of American society. The expansion of economic opportunity will render unnecessary artificial labor controls that are out of sync with the real economy and contradict the way it works.

Refusing to see the clear and present connection between immigration and the aggressive advancement of American interests is to ignore fundamental realities about the world in which we live. Just as great nations competed for raw materials in the era of industrial growth, so international relations in the digital age will increasingly be marked by a global competition for high technology and the talent to make it work. This struggle will be most obvious in the world's advanced economies with the lowest fertility rates and, consequently, the greatest need for immigration. The line between geopolitics and immigration will slowly fade. Once viewed as purely a domestic issue, employment-based immigration will, over time, emerge as a core component of US foreign policy. As nations become richer, women do not have as many children. Fewer workers are forced to support more old people. This support ratio becomes increasingly untenable over the long term. In the absence of higher birth rates, just to keep this ratio where it is right now, the retirement age in every post-industrial economy would have to be raised to politically unacceptable levels. What about reducing government benefits to seniors? Older citizens are more organized than ever before and they vote in large numbers. The political will to alter the social contract does not exist in America or anywhere else. Immigration is the only answer. Chronically low fertility requires developed nations to drain the best and the brightest from poorer nations. The United States, like Europe and Japan, must exert power to preserve vital interests. US immigration policy has already become an extension of a computer-based economy on which our future as a world leader depends. In a highly competitive global marketplace, most high-tech workers will choose the United States if we give them that choice. Pro-immigrant advocates who hold the American economy at arms length are the unwitting allies of the Fortress America Crowd that want to keep the gates tightly shut. Both would take away the ability of the American economy to benefit from our historic advantage as the place

that inquiring minds want to come.

Because they do not care if the American economy becomes more robust, pro-immigrant advocates lack the vision to identify and implement basic change. They can only try to tinker with the system as it now is, smoothing out the rough edges, speeding up processing times, but nothing more than that. All of the money and energy that goes into this tinkering can be much more wisely spent in systemic reform that eliminates the disconnect between employment-based immigration and the economy it is supposed to serve. Why does the immigration system have to be tied to specific needs of individual employers? Would it not make more sense to link it up with the broader needs of the economy so that general prosperity and overall job creation will result? Does the imposition of spartan labor controls that frustrate employers and retard the career development of alien beneficiaries produce more benefits to America than the simple alternative of making the system alien-based so that foreign-born workers have the mobility to protect their interests, and those of similarly-situated Americans, by voting with their feet and exercising freedom of choice when it comes to where they will work and under what terms or conditions? Precisely because they do not see the need for a big picture, pro-immigrant advocates walk sightless among the many possibilities for a more rational and mutually rewarding system that daily present themselves.

Nothing characterizes the anti-capitalist immigration ethos of pro-immigrant advocates, and their nativist soul mates, as its deep pessimism. They shrink from global competition precisely because they think we cannot win. In opposing such doom sayers, we must give all immigrants who want one a stake in America's economic future. Immigration is not a political problem but an economic asset that can make the future shine more brightly than the past. Reaching out a helping hand to genuine refugees fleeing hard oppression and real bullets, offering safe haven to those victimized by cruel tyranny and brutal intolerance should, and hopefully will, always remain important themes of US immigration thinking. Yet, to give full expression to what Lincoln rightly called the "better angels of our nature", is not to discourage or disparage the equally compelling notion that the promise of plenty can be enjoyed in full measure by those who work for it. Immigration can make America more aware of its moral stewardship as the world's only superpower but, we would deprive ourselves of an honest chance to realize these high ideals, if we forget that it is also a nimble and creative economic strategy. When invested with true belief and deployed with patience and foresight, immigration can enhance productivity, create opportunity, and sustain prosperity for ourselves and our posterity. Hopefully, having learned the true lesson of this turbulent election season, Americans of all political persuasions will give it an honest chance to do just that.

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## 12. NEW INS SECURITY PROCEDURES FOR WORK AND TRAVEL DOCUMENTS CAUSING CONFUSION AT LOCAL INS OFFICES

Earlier this week, Siskind, Susser, Haas & Devine learned that a number of INS offices around the country have been circulating announcements that they had suspended issuing employment authorization documents as well as advance parole documents. For example, a Texas INS office issued the following announcement:

"Due to unforeseen circumstances, the Immigration and Naturalization Service will be unable to issue Employment Authorization Documents and Travel Documents until further notice. It is expected that this situation will be resolved in approximately

sixty (60) days. If your employer has any questions, they are welcome to contact the service at 800-375-5283. We sincerely apologize for the extreme inconvenience this situation will cause you and your family."

We checked with a spokesman for the INS and learned that a memorandum was indeed circulated on November 13th to INS field offices on this subject. The memorandum informed all field adjudicators that they are to complete all appropriate security background checks, regardless of the INS benefit, and that a final adjudication cannot be made until all clearances have been obtained. An additional memorandum was issued yesterday and provided to us that seeks to clear up various misconceptions about the November 13th memorandum and assist INS offices in responding to inquiries relating to the November 13th memorandum. There are two key points that need to be clarified regarding what the memorandum did NOT say:

The memorandum only applies to asylum, adjustment of status and naturalization applications and not to travel documents or employment authorization documents. Previous rules requiring IBIS background clearances on work and travel documents continue to apply. There is NO moratorium on issuing approvals on the applications covered in the memorandum.

The original memorandum instructs all INS offices to cease same-day adjudications of benefits when there is not a temporary A-file created for a particular applicant. The memorandum also instructs officers to "ensure that benefits are not granted to ineligible applicants." While this might seem to cover work and travel documents since they are typically the only applications adjudicated on a same day basis, a source at INS headquarters confirmed that this is not the case. It is not clear what other types of applications could potentially be approved on a same day basis, but it has become clear that it is this particular item in the November 13th memorandum that has caused the most confusion at local INS offices.

If an applicant only has a temporary A-file, certain additional steps must also be taken by an adjudicator. That would include checking the Central Index System at the INS to see if an applicant's name exists in other INS systems. If nothing is found, the examiner must note this and must list the various background checks that were performed. Then a supervising officer must sign off on the case and approve the adjudication of the application. If there is a record or the possibility of a record of any sort, the adjudicator needs to locate the record and then have a specific senior official at the INS office or service center sign off.

The American Immigration Lawyers Association reported early Friday that several INS District Offices immediately suspended or altered their policies regarding issuing same day employment authorization documents and travel documents. They include Boston, Minneapolis and Harlingen, Texas. AILA later reported that Fujie Ohata of the INS' Immigrant Services Division is now saying that no INS offices have stopped adjudicating work and travel cards, though adjustment and naturalization cases could be slowed in some cases by the new procedures.

In the November 21st follow up document, the INS noted that all background checks must be complete and there are no guidelines on what is an appropriate amount of time. When we asked if there is an average or target time for security checks, we were told by the spokesman that there is no target, but that there is a feeling that

most clearances should take no longer than 60 days. But this is just a rule of thumb and cases could take longer from time to time.

The November 21st memorandum states that the "INS is continuing to process all benefit applications; there is no moratorium. Cases may not be approved, however, without the completion of the requisite security checks... All benefit applications will continue to be processed in a timely and equitable basis, given heightened level of vigilance and security considerations."

The implication of this change in procedure is that one day processing of work and travel documents will likely decrease significantly across the country and two to three month processing times will become even more common. INS offices that have always taken this length of time should hopefully not experience problems in complying in a timely manner with the new requirements. INS offices may be temporarily halting issuing documents while they determine how to comply with the rules, but these decisions are being made locally and not as a result of any order from INS headquarters.

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### 13. GAO REPORTS ON ELIMINATING VISA WAIVER PROGRAM

The US General Accounting Office this week issued a report evaluating the impact of a potential elimination of the Visa Waiver program. Created in 1986, the Visa Waiver Program grants citizens of designated countries the privilege of traveling to the United States without a visa for tourism or pleasure. In order to be eligible for the Visa Waiver Program, countries must meet certain criteria established by the Departments of Justice and State. Presently, 28 countries, including Australia, Japan, and the United Kingdom, participate in the Visa Waiver Program.

Utilizing this program, individuals can travel to the United States without a visa and can remain in the country for a period of 90 days or less. Since the events of September 11, government officials and members of the public have questioned whether such a program is in the best interest of the national security.

Besides the obvious impact on U.S. tourism and foreign relations, the report provides statistics regarding the consequences of having to increase the worldwide resources of the Department of State should consulates have to begin adjudicating visa applications for millions more applicants every year. The GAO estimates that the State Department's initial costs to manage the additional workload would range between \$739 million and \$1.28 billion; the recurring cost would be in the \$522 million and \$810 million range yearly. Additionally, the time to provide adequate personnel and facilities in these locations would extend between 2 and 4 years.

The GAO also states that there are no statistics regarding whether potential terrorists and criminals have utilized this program to be admitted to the United States. The GAO writes that "anecdotal information" supports the conclusion that such persons have been admitted to the United under both the Visa Waiver Program and with valid U.S. visas.

To view the entire report, go to: <http://www.gao.gov/highlights/d0338high.pdf>

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#### 14. LEGISLATIVE UPDATE

[H.R. 5715](#), introduced by Rep. Dan Burton (R-IN), would amend the Immigration and Nationality Act to make family members related to international child abductors ineligible for admission to the US.

[H.R. 5750](#), the Immigration Bond Fairness Act of 2002, introduced by Rep. Carrie Meek (D-FL), would eliminate the restriction on review of detention decisions and bond hearings.

[H.R. 5721](#), the Haitian Immigrant Equitable Adjustment Act of 2002, introduced by Rep. Carrie Meek (D-FL), make the Cuban Adjustment Act applicable to Haitians.

[S. 3159](#), introduced by Sen. Blanche Lincoln (D-AR), is the companion bill to H.R. 5715.

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