

Siskind's Immigration Bulletin
April 4, 2003

E-mail subscribers as of 10 October 2001: 30,159 persons (50 states/144 countries).
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SSHD serves immigration clients throughout the world from its offices in the US,
Canada and the People's Republic of China. To schedule a telephone or in-person
consultation with the firm, go to <http://www.visalaw.com/intake.html>. Editor: Greg
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1. Openers

Dear Readers:

This week I am writing Openers from the American Bar Association's TechShow in Chicago. TechShow is the country's premiere law office technology conference and

many of the top legal techies are here. This year I presented two programs. The first was entitled "Extranets for the Rest of Us." Extranets are basically systems that allow a law firm's clients to access information on their cases via a private access web site. Our firm has implemented just such a system and clients of Siskind, Susser, Haas & Devine can log into our system and see what is happening on their cases. That means our clients can find out about their cases 24 hours a day and the savings we achieve by not having to handle status updates personally means we can provide better service. I also told the audience about another feature we have in our system. As key events happen in a case, we can set up our system to automatically email clients so that it is not necessary to even remember to check the case management system. Next up for our extranet will be to allow clients to view key documents in their cases online, including BCIS notices and petition documents.

During TechShow I was pleasantly surprised to learn that our firm was also featured in a new book being published by the American Bar Association entitled THE LAWYERS GUIDE TO EXTRANETS, by Doug Simpson and Mark Tamminga. The book, which premiered at TechShow, devotes more than three pages to describing the extranet system I describe above.

The other topic on which I spoke was "Marketing on the Internet." I am the author of the new ABA book THE LAWYERS GUIDE TO MARKETING ON THE INTERNET, 2 Ed. and I presented with my co-author Rick Klau. We discussed the latest trends in web site marketing, more effectively using email, and how some of the newest Internet products can be incorporated into a law firm's marketing strategy. If you want to learn more about these subjects, my book can be purchased online at the ABA's web site www.lawpractice.org.

One of the stories we are covering this week is the first Congressional hearing on SEVIS since the program was implemented earlier this year. SEVIS is the Student and Exchange Visitor Information System and is intended to allow the government to more closely track F-1, M-1 and J-1 visa holders in the US. The program has been very controversial since Congress authorized its creation in 1996. The program was delayed several times, but after September 11th, the pressure on the government to get SEVIS in place was intense. And after seven years, we now have the system up and running. Now Congress wants to find out if SEVIS is really operating well and achieving its goals.

This week we include our regular features, including a Canadian Corner column written by our Toronto branch partner Leonard Pearl. We also include part 2 of our ABCs of Immigration on health-related grounds of inadmissibility.

In firm news, I am quoted in this morning's Times of India newspaper regarding the BCIS' "zero tolerance" policy that has been the rule since September 11th. You can find the article online at <http://timesofindia.indiatimes.com/cms.dll/html/uncomp/articleshow?msid=42301511>.

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 – Waivers for Health-Related Grounds of Inadmissibility

All green card and visa application forms ask questions designed to find out if any health related grounds of inadmissibility apply. If the answers to the questions reveal that there are grounds for inadmissibility, an applicant can request a waiver. To receive a waiver of inadmissibility, the applicant does not need to eliminate or disprove the ground of inadmissibility but instead petitions the Bureau of Citizenship and Immigration Services to overlook the problem and issue a green card or visa.

The health related grounds for inadmissibility are:

1. communicable diseases;
2. physical or mental disorders which threaten the safety of oneself or others;
3. drug abusers or addicts; and
4. failure to vaccinate against certain vaccine-preventable diseases.

There are waivers available for most of the health grounds of inadmissibility except for drug abusers and addicts.

An applicant with a communicable disease may receive a waiver if the applicant has the requisite relationship to a U.S. citizen or permanent resident spouse, unmarried child, unmarried minor lawfully adopted child or parent. And, of course, the applicant must be eligible for permanent residence status in all respects except for the health related grounds of inadmissibility.

The most common communicable diseases for which waivers are sought are tuberculosis and HIV(AIDS). A waiver applicant with tuberculosis must agree to see a doctor immediately upon admission and make arrangements to receive private or public medical care. An HIV+ waiver application must include evidence that

1. the danger to the public health of the United States created by his or her admission is minimal;
2. the possibility of the spread of the infection created by his or her admission to the United States is minimal; and
3. there will be no cost incurred by any level of government agency of the United States without prior consent of that agency.

HIV+ applicants will also have to show the following:

1. medical treatment has been arranged in the United States;
2. the applicant is aware of the nature and severity of his or her medical condition;
3. the applicant has provided evidence of counseling; and
4. the applicant has demonstrated a knowledge of the modes of transmission of the virus.

A person with a physical or mental disorder which threatens the safety of the applicant or others may receive a waiver if they meet the special conditions required

by the BCIS. The applicant must submit detailed documentation that shows the person's medical history and, in the case of mental illness, the applicant must also show that he or she has recovered. The applicant must have a statement from a hospital or physician practice affirming that it will examine the immigrant upon admission.

The applicant who is found inadmissible for not being vaccinated, may receive a waiver if

1. the applicant received a vaccination but does not have documentation;
2. the vaccine is medically inappropriate as certified by a civil surgeon; or
3. having vaccines administered is contrary to the applicant's religious beliefs or moral convictions. There must be an objection to vaccinations in any form.

The applicant requests a waiver of inadmissibility on Form I-601 accompanied by \$170.00 filing fee. If the applicant is outside the United States the application is submitted to the consul for transmission to the BCIS. If the applicant is within the United States the application may be made in proceedings for adjustment of status. Note that waivers can take many months to process.

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 - I am a Filipino international medical graduate. I am currently in the United States for my fellowship training on a J1 visa. My wife is pregnant and is giving birth on June 2003. Will my baby automatically become a U.S. citizen based on jus soli or will she follow her parents citizenship, in our case, Filipino? I have heard rumors that there are new laws that being born in the US doesn't automatically make one a US citizen anymore. I don't know how true this is. I hope you can clarify this issue for me.

A - Your baby will automatically be a US citizen. There are no new laws altering this despite the efforts of some in Congress to make changes.

Q - I would like to ask a question, please? I have an expired Green Card-Permanent Residency, since Dec. 1947. My card still has my baby picture on it. I have requested the forms from INS more than once and have received them. I have also spoken to INS on the phone and they told me that my Permanent Residency is not expired, just my card. Is that true? I would hate to go to Immigration and find out otherwise. Can you advise me? And why haven't I taken care of this in the past? I have lived here all of my life, and frankly most times I don't even think about it. But now with

this war and the Patriot Act, I am feeling a little paranoid about my situation. Any information will be appreciated. Thank you!

A - It is true. If you maintain your permanent residency in the US, you are eligible for a new card no matter how many years have passed since it was issued. You need to file an I-90 form in person at your local INS office. You might also look at this as an opportunity to apply for US citizenship, by the way.

Q - My wife applied my Green card she is Citizen, I got the green card past year ,but my green card expires in March 2004, INS send me an letter with green card saying that I should file x form before it expires, And when should I file that form. My Question is when I will be eligible for Citizenship.

A - You will be eligible to apply for citizenship two years and nine months from the date you became a permanent resident (assuming you are still married to your wife).

Q - I would like to learn more about a child born to an American parent (father) in a foreign country. Where can I learn more about this on the Internet?

A - You might find the article we have written on this subject at <http://www.visalaw.com/01mar2/12mar201.html> helpful. Good luck.

Q - Does an International Student go thru any medical examination when they have been accepted to a college and go to the embassy for their visa?

A - No. Medical exams are only required for permanent residency petitions and certain naturalization cases.

4. Border News

This week law enforcement sources said they uncovered a plot by an Iraqi terror team to get smuggled into the U.S. through Mexico, in an effort to reach the Bush ranch in Crawford, Texas. The team was armed with millions of dollars and wanted to hire smugglers to sneak them into the country, according to one official quoted in the New York Daily News. Secret Service agents would not comment on the suspects' whereabouts or the status of the threat. Details of the scheme were not available, but it is known that Saddam Hussein tried to assassinate George H. W. Bush in 1993, during a visit to Kuwait. President Clinton ordered a Tomahawk missile strike on Iraq when the attempt was discovered.

The Enforcement Section of the INS's 2002 Statistical Yearbook was released this week. According to the report, more than 70,000 undocumented aliens were removed last year. The Statistical Yearbook includes information about actions taken

by immigration authorities and border patrol agents to prevent illegal entry into the United States and to apprehend and remove deportable aliens from the US.

View the full report:

<http://www.immigration.gov/graphics/aboutus/statistics/ENF2002list.htm>

Border security experts gave testimony this week in hearings before the National Commission on Terrorist Attacks Upon the United States, the federal commission looking into the 9-11 attacks. Their assessment of the homeland's security was grim, as they indicated that the nation's ports are porous, airport facilities are unprepared and border checkpoints are deficient.

Gerald Dillingham, an official who handles civil aviation issues for the General Accounting Office, said the nation's civilian airports and ports are not prepared in the event of another terrorist attack. He said that airport baggage checks were better but that only two percent of cargo containers arriving from foreign ports is checked.

Justice Department Inspector General Glenn Fine told the commission that he was unsure if it would have made any difference if the INS had been better funded and had more information, noting that most of the 19 terrorists who hijacked the airplanes on 9-11 entered the country with valid visas.

This week Robert C. Bonner, commissioner of the Department of Homeland Security's new Bureau of Customs and Border Protection, said the country is better protected against terrorists and weapons of mass destruction now than it has ever been. Bonner, in comments printed by the Washington Times, said the new agencies in charge of homeland security were off to a good start.

"We have a comprehensive strategy for securing our borders against the threat of terrorism, which will also allow us to be more effective in protecting against illegal aliens and drug smugglers coming into the United States through, between and under our ports of entry," Bonner said.

Many of Canada's leading executives are pushing a proposal for a joint North American security perimeter, with the border between the countries reduced to a checkpoint managed by Canadian and American police officers. Members of the Canadian Council of Chief Executives will meet with Canadian Deputy Prime Minister John Manley and Homeland Security Secretary Tom Ridge next week in Washington. Also expected to attend are Energy Secretary Spencer Abraham, Senator Hillary Clinton, White House Chief of Staff Andrew Card, Bank of Canada Governor David Dodge, among others. The council wants to redistribute security forces away from the shared border to focus more on the continent's air and seaports. Members see faster border crossings as a secondary advantage to the plan. U.S. Ambassador Paul Cellucci and Ridge have been advocates of the proposal, but Prime Minister Jean Chretien and Manley have previously rejected it as overly simplistic.

The chairman of a House subcommittee said the Department of Homeland Security has provided Congress with "no justification" for the \$6.7 billion budgeted for the Bureau of Customs and Border Protection for fiscal year 2004. Harold Rogers, chairman of the Appropriations Subcommittee, told Asa Hutchinson he was disappointed with the delay in explaining the budget request. Hutchinson, the undersecretary for border and transportation security, said the budget proposal reflects the administration's commitment to "securing the nation's borders, transportation systems, ports of entry and points in between."

5. News From The Courts

Errol L. Hall v. Immigration and Naturalization Service United States District Court for the District of Rhode Island

Enrol L. Hall, in the custody of the Bureau of Immigration and Customs Enforcement, filed an emergency motion for immediate release from mandatory detention or in the alternative an individualized bond hearing. Hall claims that his mandatory detention by the INS under section 236(c) of the Immigration and Naturalization Act violates the due process clause of the Fifth Amendment to the United States constitution. Section 236 (c) requires the mandatory, pre-removal detention of criminal foreigners. The court held that Hall's right to due process under the Fifth Amendment has been violated by his mandatory detention under section 236(c) without an individualized pre-detention hearing.

In 1973, Hall, a Jamaican citizen, came to the United States on a visitor visa. In 1983, he was convicted of armed robbery and served two years of a twenty-years prison sentence. The remaining time was to be spent on parole. In 1997, he violated his parole and was sentenced to two years as an accessory before the fact and for deriving support from prostitution. The INS issued a Notice to Appear charging Hall as being removable based upon his overstaying the visitor visa and the 1983 conviction. In 1999, upon completion of his sentence, the INS took Hall into custody.

The Immigration Judge found that Hall was deportable (1) as a foreigner who overstayed his temporary period of admission since 1973 and (2) because of his conviction for an aggravated felony (armed robbery) in 1983. The Board of Immigration Appeals affirmed. The BIA reopened Hall's removal proceedings and remanded the matter to the Immigration Judge for further proceedings and a new decision on his application for waiver of removal. Hall had two INS administrative custody determinations that indicated that he should be detained in INS custody pending a final determination of his removal.

In this case, the court referred to Zadvydas v. Davis, 533 U.S. 678, 693 (2001) where the Supreme Court held that the due process clause applies to all persons within the United States, including foreigners, whether their presence here is lawful, unlawful, temporary, or permanent. The court in this case explained that the degree to which an alien is entitled to protections and afforded rights by the Constitution is dependent on the particular classification of the foreigner on a scale ranging from excludable to legal permanent resident (LPR). The court held that Hall is a deportable foreigner who falls closer to the LPR side than the excludable side. They reasoned that because his time in the United States has not been brief, his entire family lives

here and INS has detained him for three years awaiting a final determination on his adjustment of status application, Hall is entitled to an increased degree of protection.

This case involves a liberty interest that refers to the right to be free from government detention without the opportunity for an individualized hearing to address risk of flight and danger to the public. The court held that Hall has a fundamental right to be free from mandatory detention without a bail hearing. In its decision, this court agreed with Hoang v. Comfort, 282 F.3d 1247, 1259 (10th Cir. 2002) which held that Section 236(c), rather than establishing a procedure to determine which foreigner might be a flight risk, it establishes a presumption that all foreigners to which mandatory detention applies are flight risks and a danger to the community. The court ruled that for Section 236(c) to simply presume that Hall is a flight risk and dangerous without the opportunity to rebut that presumption violates his substantive due process rights. They reasoned that a statute that simply assumes that every foreigner convicted of an "aggravated felony" is a danger to the community is not sufficiently narrowly tailored to address the compelling government interest of preventing the absconding of foreigners pending deportation and/or protecting public safety.

The court ordered the INS to hold a prompt hearing at which an individualized determination of Hall's risk of flight and danger to the community may be assessed, and an appropriate determination may be made with respect to whether he should be detained or released pending the final outcome of his appeal.

* * *

United States of America v. Carmen Hernandez
United States Court of Appeals for the Seventh Circuit

Carmen Hernandez, a citizen of Peru, was convicted of conspiracy to import, possess, and pass counterfeit United States currency. The district court sentenced Ms. Hernandez to eleven months confinement and three years of supervised release. The district court granted a downward departure sentence of two levels because the Sentencing Guidelines would have required a sentence of more than one year, which would have led to Ms. Hernandez's deportation. In this suit, the Government appealed the sentence. The court held that the district court abused its discretion in granting a two-level downward departure in Ms. Hernandez's sentence.

Sentencing Guidelines § 5K2.0 allows departures from the range established by the Guidelines "if the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the Guidelines that should result in a sentence different from that described." U.S.S.G. § 5K2.0 (quoting 18 U.S.C. § 3553(b)). The district court granted the downward sentence reasoning that Ms. Hernandez's two U.S. citizen children, ages five and six, would have to live with their father in the United States or with their mother in the country to which she is deported. They further reasoned that such a result was not contemplated by the Guidelines.

This court explained in United States v. Guzman, 236 F.3d 830 (7th Cir. 2001), that "the defendant's status as a deportable alien is relevant only insofar as it may lead to conditions of confinement, or other incidents of punishment, that are substantially more onerous than the farmers of the guidelines contemplated in fixing the

punishment range for the defendant's offense." *Id.* at 834. The Government argued that the district court did not explain how Ms. Hernandez's immigrant status would make the conditions of her confinement more onerous than anticipated by the Sentencing Commission. The court further noted that the Sentencing Guidelines provide that "family ties and responsibilities and community ties are not ordinarily relevant in determining whether a sentence should be outside the applicable guideline range." U.S.S.G. § 5H1.6.

The court reasoned that families are often separated by deportation and that the situation in which one parent may remain in the country legally with children who are U.S. born citizen, while the other parent is ordered deported, by no means warrants a sentence outside applicable guideline range. *Koon v. United States*, 518 U.S. 81, 96 (1996). The court ruled that the drafters of the Guidelines clearly knew that such cases arise with some frequency; therefore, this case is neither extraordinary, nor is the result substantially more onerous than the Commission calculated in drafting the Guidelines. The sentence was vacated, and the case was remanded for imposition of a sentence in conformity with this opinion.

6. Government Processing Times

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

Source: [American Immigration Lawyers Association](#)

California Service Center Processing Time Report 3/15/03		
Form		We are now processing cases with these receipt dates:
I-90	To replace lost, damaged or destroyed I-551	5/16/2002
I-90	To renew expiring I-551	5/16/2002
I-102	For replacement/initial nonimmigrant arrival/departure form	2/27/2003
I-129	For H-1B classification COS	10/7/2002
I-129	For H-1B classification EOS	10/7/2002
I-129	For H-2A classification	3/15/2003
I-129	For H-2B classification	2/20/2003
I-129	For H-3 classification	10/8/2003
I-129	For E classification	2/12/2003

I-129	For L classification	2/20/2003
I-129	For Blanket L petition	3/15/2003
I-129	O classification	11/18/2002
I-129	P classification	11/18/2002
I-129	Q classification	11/18/2002
I-129	R classification	7/16/2002
I-129	TN classification	
I-129F	(Fiancée)	12/23/2002
I-130	For spouse, parent, or child (under 21) of a United States citizen	10/9/2002
I-130	For Unmarried son/daughter (over 21) of a United States citizen	4/5/2001
I-130	For Spouse/Child of a lawful permanent resident	4/6/1998
I-130	For Unmarried son/daughter (over 21) of a lawful permanent resident	4/6/1998
I-130	For Married Son/daughter of a United States citizen	4/5/2001
I-130	For Brother/Sister of United States citizen	4/6/1998
I-131	For Advance Parole	2/3/2003
I-131	For Advance Parole for HRIFA principal applicant	
I-131	For Reentry Permit	
I-131	For Refugee Travel Document	
I-140A	(extraordinary ability)	9/27/2002
I-140B	(outstanding professor or researcher)	8/9/2002
I-140C	(multinational executive or manager)	10/16/2002
I-140D	(professional holding adv. degree/alien of exceptional ability)	10/22/2002
I-140E	Skilled worker or professional	10/22/2002
I-140I	(National Interest Waiver)	2/18/2003
I-140G	(other worker)	11/18/2002
I-212	Permission to reapply for admission after deportation/removal	1/19/2001
I-360	Petition for Amerasian, widow(er), or Special Immigrant	2/12/2003
I-485	Asylum-based	
I-485	Refugee-based	
I-485	Employment-based	11/16/2001

I-485	Haitian Refugee Immigration Fairness Act (HRIFA)-based	
I-539	For extension of stay for F or M non-immigrant	2/13/2003
I-539	For extension of stay for J non-immigrant	
I-539	For extension of stay for L or H non-immigrant	2/13/2003
I-539	For extension of stay for other non-immigrant	2/13/2003
I-539	To change nonimmigrant classification to F or M	2/13/2003
I-539	To change nonimmigrant classification to J	
I-539	To change nonimmigrant classification to L or H	2/13/2003
I-539	To change to other nonimmigrant classification	2/13/2003
I-612	Waiver of foreign residence requirement	2/3/2003
I-730	Refugee/Asylee Relative Petition	
I-751	Petition to Remove Conditions on Residence	7/18/2002
I-765	For initial asylee or asylum applicant authorization	Current
I-765	For employment authorization associated with Hurricane Mitch TPS	Current
I-765	For employment authorization associated with El Salvador TPS	Current
I-765	For employment authorization while I-485 is pending	9/9/2002
I-765	For all other employment authorization	8/14/2002
I-817	Application for Family Unity Benefits	6/14/2002
I-821	For El Salvador	4/17/2002
I-821	For Hurricane Mitch countries	12/20/2002
I-824	Application for Action on an Approved Application or Petition	3/27/2002
I-829	Petition by Entrepreneur to Remove Conditions	10/23/2000
I-914	Application for T Non-immigrant	

Texas Service Center Processing Times Report March 31, 2003	
Form	We are Processing cases with these receipt notice dates:
I-90 to replace lost, damaged or destroyed I-551	4/10/2002
I-90 to renew expiring I-551	n/a
I-102 for replacement/initial nonimmigrant arrival/departure	8/6/2002

form	
I-129 for H1B classification	10/4/2002
I-129 for H2A classification	current
I-129 for H2B classification	12/16/2002
I-129 for H3 classification	1/13/2003
I-129 for L classification	1/13/2003
I-129 for Blanket L petition	1/13/2003
I-129 for O classification	12/12/2002
I-129 for P classification	1/13/2003
I-129 for Q or R classification Q	Q Current - R 10/11/2002
I-129 for TN classification	n/a
I-129F (fiancée)	11/1/2002
I-129 For E classification	9/11/2002
I-130 for Spouse, Parent or Child of US Citizen	6/8/2001
I-130 for Spouse of Lawful Permanent Resident	4/3/1998
I-130 for Other Relative	4/3/1998
I-131 for Advance Parole	10/22/2002
I-131 for Advance Parole for HRIFA principal applicant	n/a
I-131 for Reentry Permit	n/a
I-131 for Refugee Travel Document	n/a
I-140 A (extraordinary ability) IST PREF	5/20/2002
I-140 B (outstanding professor or researcher) IST PREF	5/20/2002
I-140 C (multinational executive or manager) IST PREF	5/20/2002
I-140 D (professional holding adv. degree/alien of exceptional ability) 2ND PREF	8/29/2002
I-140 E (skilled worker or professional) 3RD PREF	9/13/2002
I-140 I (National Interest Waiver)	6/26/2002
I-140 G (other worker) 3RD PREF	9/13/2002
I-212 permission to reapply for admission after deportation/removal	n/a
I-360 petition for Amerasian, widow(er), or Special Immigrant	3/3/2003
I-485 Asylum-based	n/a
I-485 Refugee-based	n/a
I-485 Employment-based	11/1/2000
I-485 Haitian Refugee Immigration Fairness Act (HRIFA)-based	n/a
I-526 Immigrant Petition by Alien Entrepreneur	11/15/2002

I-539 for extension of stay for F or M non-immigrant	12/20/2002
I-539 for extension of stay for J non-immigrant	n/a
I-539 for extension of stay for L or H non-immigrant	12/20/2002
I-539 for extension of stay for other non-immigrant	12/20/2002
I-539 to change nonimmigrant classification to F or M	12/20/2002
I-539 to change nonimmigrant classification to J	12/20/2002
I-539 to change nonimmigrant classification to L or H	12/20/2002
I-539 to change to other nonimmigrant classification	12/20/2002
I-612 waiver of foreign residence requirement	9/17/2002
I-730 Refugee/Asylee Relative Petition	n/a
I-751 Petition to Remove Conditions on Residence	9/13/2002
I-765 for initial asylee or asylum applicant authorization C-8	12/26/2002
I-765 for employment authorization associated with Hurricane Mitch TPS	7/8/2002
I-765 for employment authorization associated with EI Salvador TPS	8/1/2002
I-765 for employment authorization while I-485 is pending C-9	11/4/2002
I-765 for all other employment authorization	11/29/2002
I-817 Application for Family Unity Benefits	12/17/2002
I-821 for EI Salvador	4/13/2001
I-821 for Hurricane Mitch countries	8/17/1999
I-824 Application for Action on an Approved Application or Petition	8/8/2002
I-829 Petition by Entrepreneur to Remove Conditions	3/22/1999
I-914 Application for T Non-Immigrant	n/a

7. News Bytes

The Center for Victims of Torture has urged Iraqi refugees not to watch war coverage. Officials said they know Iraqis in the United States are desperate to hear news from back home, but they fear the media coverage could traumatize some. Many counselors say their clients worry about relatives living in Iraq because phone and email connections have been poor. Center spokeswoman Rachel Tschida said victims who suffered at the hands of Saddam Hussein need to limit how much war coverage they read and watch because the images could trigger flashbacks and bring old fears to the surface.

On Monday Secretary of State Colin Powell held a press briefing on the release of the State Department's 2002 Annual Report on Human Rights, along with Lorne Craner, Assistant Secretary for Democracy, Human Rights, and Labor.

Powell said, "The Bush Administration is strongly committed to working with government leaders, nongovernmental organizations, free trade unions and individuals across the globe to improve compliance with international human rights standards. We are working to foster accountable governance and spur political, legal and economic reforms. We are channeling development assistance and other resources towards nations that govern justly, that invest in their people, and that embrace economic freedoms."

Craner said that Iraq was the year's primary offender when it came to human rights. The report also chronicles violations throughout the Middle East.

"The region's democratic experiments, along with the experience of millions of Muslims living in established democracies, offer hope that working towards democracy in this region, while not an overnight process, is an achievable goal," Craner said.

The report also focuses on human rights abuses in China, "from systematic abuses of political and religious freedom to the jailing of dissidents."

The report is often cited in asylum petitions to document whether an applicant is likely to face persecution in his or her home country. The full report can be found online at: <http://www.state.gov/g/drl/rls/hrrpt/2002/>

The Social Security Administration published a notice of intent to change its record system, allowing for information maintained by the SSA to be provided to the Department of Homeland Security upon request in order to identify and locate aliens in the United States.

You can view this notice in the Federal Register using this link: <http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/2003/03-7755.htm>

Despite the political climate surrounding the Iraq war and terrorism, a coalition of Hispanic religious leaders is pushing for amnesty for undocumented immigrants in the United States. Members of the coalition, which represents 2,500 churches in 17 states, have met with members of Congress, including Majority Leader Bill Frist, to lobby for an amnesty bill. U.S. Census estimates place the number of undocumented aliens living in the United States at eight million.

A vote last week in the Arizona State Senate killed a proposal to remove the requirement that people show they are citizens or in the U.S. legally in order to get a

driver's license. The measure failed by a vote of 12 to 11 following days of demonstrations at the State Capitol building. Advocates of the bill say that those without a license cannot get insurance and are more likely to flee the scene of an accident.

Jon Kyl, Arizona's junior senator, said the government should crack down on employers who hire undocumented workers, in a discussion of terrorism and domestic security recorded by the Arizona Daily Star.

"There are elements of business who rely upon labor that is, to a large extent, we believe, here in the United States illegally," Kyl said. "It is horribly hypocritical and inconsistent for us to be expending so much in the way of resources to be protecting the border... and yet not seem to care very much about the employment, illegally, of people who came here illegally."

Farrell Quinlan, a lobbyist for the Arizona Chamber of Commerce, disagreed, saying, "punishing business for our failed border policy is short sighted. The problem is that the United States is the beacon of the world."

Quinlan said a crackdown on companies that hire undocumented workers would result in "a lot of disruption."

"What things won't get done in this country without that workforce?" Quinlan asked.

Kyl countered by saying the nation should either enforce its laws or change them, and that federal agents would go after "the worst abuses."

The Bureau of Citizenship and Immigration Services held its first citizen swearing-in ceremonies over the past week in Miami-Dade County Auditorium and in a sports arena turned federal court in Los Angeles. Thousands of immigrants, including members of the U.S. Armed Forces, took the oath of citizenship. In both cases, the new citizens carried small American flags and received applause from the crowd. The BCIS is part of the Department of Homeland Security and has taken over many of the services formerly maintained by the INS.

The BCIS' Immigrant Services Division made several announcements during its recent regular meeting with the American Immigration Lawyers Association. One issue discussed was how to obtain refunds if you filed an application with the normal fee early this year during the period of time when the fees were temporarily lowered. For applications received before February 27th with the old fees, the ISD will identify cases due a refund and send the information electronically to the Department of Treasury. The Treasury Department expects that refund checks will be issued within three to four months of that.

The ISD also noted that BCIS service centers have been advised that they cannot backdate employment authorization documents in order to prevent gaps when EAD renewal applications are sent to close to the expiration date of the first EAD card.

BCIS official Bill Yates also told AILA's Board of Governors in a separate meeting that the BCIS intends to continue the premium processing program and the program will be expanded. The BCIS intends to eventually phase out premium processing and have timely processing of all applications. However, special registration and background checking are delaying that plan.

The Labor Department is also telling AILA that PERM regulations are due out in July with an October expected implementation date. Cases filed before PERM regulations become effective will be adjudicated under the rules in effect at the time the application was filed unless they are upgraded. Upgrading will require a showing that the advertising meets the standards in the PERM regulation. The priority date will not be affected.

8. International Roundup

New British Law Allows Government To Revoke Citizenship

New laws that came into force this week give the government the authority to revoke British citizenship from immigrants who "seriously prejudice" the country's interest. The laws are changes to the Nationality, Immigration and Asylum Act, and are part of a plan to cut the flow of asylum seekers. Asylum applications reached record levels last year, and the British government has taken many steps to meet its goal of cutting the number in half within seven months.

Malaysia Freezes Immigration Over SARS Threat

The Malaysian government will freeze the immigration of foreign workers and tour groups from several countries where there have been reports of an outbreak of Severe Acute Respiratory Syndrome (SARS). Among the countries named are China, Hong Kong, Taiwan, Vietnam, Singapore and Canada. Health Minister Chua Jui Meng and Health Ministry director general Mohamad Taha Arif held a news conference and said there had been no deaths from the illness in Malaysia.

South Korean Justice Minister Pledges To Simplify Immigration

Justice Minister Kan Kum-sil promised to simplify immigration procedures and ease requirements for those seeking permanent resident status. At a luncheon hosted by the Seoul Foreign Correspondents' Club in downtown Seoul, Kang said he would take a stronger stance against human rights violations of illegal immigrants. He said that 290,000, or nearly half, of foreigners residing in the country were undocumented.

World Cup Bomb Plotter Seeks Asylum In Britain

Omar Saiki, 33, a French-Algerian who was jailed for four years and stripped of his French citizenship for his part in a plot to bomb the 1998 World Cup in France, is seeking asylum in Britain. Saiki, an Islamic militant, arrived in Britain last September. While staying at the Muslim Welfare House, Saiki was filmed by an undercover French journalist and was recorded as saying he was the "representative of the GSPC (the Salafist Group for Preaching and Combat) in France." The GSPC has been linked to Al-Qaeda. Saiki denied he was involved in terrorist activities and said came to Britain because of its culture of "preserving human rights, justice and liberty." He also denied that he was a member of the GSPC, saying he was only talking about his alleged reputation with the French secret service when he identified himself as a representative of the group.

9. Canadian Corner

Leonard Pearl is a lawyer in SSHD's Toronto office and specializes in Canadian immigration law.

Citizenship & Immigration proposal to bring diamond cutters to Canada

Immigration Canada hopes to bring more foreign diamond cutters to Canada under a proposed pilot project with Alberta and the Northwest Territories.

Under the proposal the diamond industry could nominate gem cutters from around the world for work permits.

If successful the industry nominated concept may be expanded to other labour shortage sectors.

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. 23 Soldiers Sworn in as Citizens

This week Federal Judge Gary Feess singled out 23 members of the United States Armed Forces during a citizenship swearing-in ceremony in Los Angeles.

Foreign-born recruits join the military for many reasons, including education benefits, job security and love of their adopted country. And now, enlisting puts them on the fast track to citizenship.

Since President Bush signed a temporary executive order in July making all soldiers with green cards immediately eligible for citizenship, eliminating a three-year waiting period, nearly 6,000 soldiers have become U.S. citizens. The president's executive order affects any member of the military serving after September 11, 2001. It essentially allows them to apply for citizenship immediately and is described as a gesture to thank the soldiers for their service in defending the country.

Similar decrees during World War II, the Korean War, Vietnam and the 1991 Persian Gulf War helped hundreds of thousands of immigrants become U.S. citizens. The

White House says the new policy is not aimed at boosting recruitment but is intended to reward those who volunteer in the war against terrorism.

As the war in Iraq unfolds, the prominence of immigrants serving in the armed forces could help to temper the debate over immigration in the wake of the 9-11 terror attacks, which has lead the Bush administration and Congress to tighten immigration policy and increase scrutiny at the nation's borders and ports.

According to various sources, there are between 30,000 and 50,000 foreign nationals serving on active duty in the U.S. military, which constitutes about 3 percent of 1.4 million soldiers. The executive order made around 15,000 foreign nationals in the military immediately eligible.

To handle the number of requests being filed by military personnel, which have quadrupled from about 300 a month to more than 1,300 a month, the government created a team to quickly process the military applications.

Most of the new citizens come from Mexico, followed by the Philippines, Vietnam, Korea and Iran. Critics say the government is playing off the desire for citizenship to exploit these mostly poor immigrants from Latin America, Asia and the Caribbean, for this war effort.

In recent weeks, the U.S. Embassy and its nine consular offices in Mexico have fielded hundreds of requests from Mexicans offering to fight for the United States in exchange for American citizenship. Rumors were rampant on Mexico's streets that Mexicans could win U.S. citizenship if they serve in the U.S. military. The embassy placed a notice on its web site explaining that only U.S. citizens or legal permanent residents are eligible to join the military. Many are reported to have walked away disappointed. The Mexican media has besieged Jim Dickmeyer, an embassy spokesman, to clear up the confusion over the U.S. enlistment policy.

The U.S. awarded posthumous citizenship to two Marines from California who were killed while serving in Iraq. Lance Cpl. Jose A. Gutierrez and Cpl. Jose A. Garibay died in the first three days of the war.

Some California legislators have drafted a bill to urge Congress to grant citizenship to all legal immigrants who are discharged honorably from the armed services.

Related Stories From The Visalaw.com Archives:

<http://www.visalaw.com/03mar3/2mar303.html>

<http://www.visalaw.com/02jul2/11jul202.html>

11. FBI Interviews 11,000 Iraqi Nationals

Shortly before US and coalition military forces entered Iraq for Operation Iraqi Freedom, Homeland Security Secretary Tom Ridge announced measures that would be taken in this country as part of Operation Liberty Shield. Included in the plan were changes to asylum rules, heightened security patrols at points of entry and

major cities, and a campaign to interview more than 11,000 Iraqi-born people in the United States.

FBI director Robert Mueller said that the interviews have yielded valuable information about possible targets for U.S. troops in Iraq, including descriptions of bunkers, tunnel systems and Iraqi military officials, among other material. Agents said they were also trying to get information about possible terrorists in Iraq.

Arab-American and civil liberties groups denounced the interviews as profiling, but advocates, lawyers and those interviewed have given mostly positive feedback about the interviews. Last week, we included a list of the questions agents were asking in our News Bytes article. Among the questions asked were:

- Would you be willing to return to Iraq and recruit for us?
- Have you or any member of your family served in the Iraqi military?
- How did you get to the U.S.?
- Do you know of anyone who can assist us, do you know of anyone with information that we would be interested in; do you know of anyone who is planning anything against the U.S.?

Agents also asked about people's immigration status, their lives in Iraq, why they left, and if they attend a mosque. The interviews were held with both men and women, citizens and recent immigrants. The FBI set out to interview 11,000 people out of a pool of 50,000 Iraqis living in the United States.

Officials said about 30 of the interviewed Iraqis had been detained for immigration violations, with a few others detained for other, unreleased reasons.

12. House Hears Testimony on SEVIS

This week the House Subcommittee on Immigration heard testimony from officials involved with the Student and Exchange Visitor Information System (SEVIS). SEVIS is designed to track the whereabouts of approximately 500,000 foreign students studying at U.S. colleges and universities. The system was mandated by Congress in 1996 and rules for its implementation were rolled out after the 9-11 terrorist attacks. Schools were required to use the system exclusively by February 15. Since that deadline, the system has been criticized for technology glitches such as sending student records to the wrong schools or losing previously entered information.

On Wednesday the committee heard from Johnny Williams, a top Homeland Security Department official. Williams is the interim director of immigration enforcement at Homeland Security's Bureau of Immigration and Customs Enforcement, which replaced part of the Immigration and Naturalization Service. He said that despite the glitches, SEVIS is fully deployed and working well.

Another official told the committee that SEVIS still lacks key components for it to be considered fully deployed. Justice Department Inspector General Glenn Fine gave the committee a list of recommendations to improve the system's effectiveness. Among Fine's proposals were the following:

- to appoint a foreign student program coordination manager to be accountable for immigration issues affecting foreign students
- to hire full-time staff to certify and monitor schools
- to monitor the timeliness and quality of work done by contract investigators, and to improve their on-site review checklist
- to coordinate with the Department of Education to conduct school audits
- to provide schools with training and certification
- to investigate cases of fraud identified by SEVIS and to ensure that there are sufficient investigation resources available

David Ward, president of the American Council on Education, voiced many of the complaints of foreign students and their advisors.

"I fear that we are, for a variety of reasons, making it more difficult for international students and scholars to come to our country and to complete their studies, scholarship and research. This is mostly because enormous and complicated efforts have been made in a very short period of time. The result is a complicated set of new regulations, rules and procedures that do not work very well at the present time. Eventually, they will work well, but the damage to our reputation as the destination of choice may be seriously undermined before that happens," Ward testified.

Ward said he thought SEVIS was the most important part of the governments plan to monitor foreign students and said he supports its implementation, but he said he was concerned that the system was implemented before it was fully operational.

Ward listed what he called three serious problems with the SEVIS. He said that it is technologically flawed; that, contrary to promises, SEVIS does not provide real-time data access; and that the government has not provided adequate training. Ward also recommended that the Social Security Administration be given access to SEVIS, so that it could verify work authorization before issuing Social Security numbers, which would reduce the administrative burden on college and university staff.

The committee also heard from retired INS Atlanta District Director Thomas Fischer, who said that SEVIS in its current form is a "dumbed down" version of the CIPRIS program, and that it is not capable of effectively tracking and enforcing student visa policies. Fischer said SEVIS lacks several features that would enable the system to coordinate the tracking of student financial data, among other things.

Fischer was critical of the investigation process and urged the committee to stiffen penalties for institutions that do not comply with SEVIS policies.

"SEVIS... given the way it is configured, appears to be a "user friendly" database, with no serious or thorough means of ferreting out violators or trends, or cross checking with other pertinent governmental databases," Fischer said.

13. Hijacked Cuban Plane Lands In Key West

A man hijacked a passenger airplane in Cuba this week using two fake hand grenades and ordered it to fly to Key West Florida. It was the second hijacking from Cuba in as many weeks and spawned an argument between the US and Cuban

government. US Officials scolded Cuba for incompetent airport security, and Cuba accused the US of being soft on hijackers.

Miami FBI chief Hector Pesquera said in a news conference that the man faces 20 years in federal prison.

Adermis Wilson Gonzalez, 33, boarded the plane with his wife and son and landed in Havana Monday night. The plane was refueled and Cuban government officials held negotiations with the man that eventually led to the release of 20 passengers and the delivery of three white packages to the plane.

It took flight again Tuesday morning and headed to Florida. U.S. fighter jets held defensive positions, but the plane and all 32 people still on board landed safely. Key West International Airport was evacuated.

Wilson was the first off the plane, carrying his son and wearing a red jacket with "America" stitched on the back. The fake grenades were removed from his pockets, and he was arrested. The other passengers were processed by federal agents, but some asked to be allowed to stay in the United States.

Responding to the question of US immigration policy being to blame for such incidents, Philip Reeker, a State Department spokesman, said it is not US law that encourages Cubans to flee their country.

"Our policy, again, is that Cubans should arrive here only through safe, legal and orderly means. So I think it is, again, Cuba that needs to examine the way they treat their people, the way they have for decades, and why their people are so eager to flee their country and seek better opportunities elsewhere, including the United States.

14. Legal Immigrants Lose Medicaid Benefits Under Colorado Law

The American Civil Liberties Union has filed a lawsuit in the United States District Court in Denver, Colorado, challenging the state's Senate Bill 176 as unconstitutional because it cuts off legal immigrants who qualify for Medicaid benefits under federal law. The legislation, signed by Governor Owens on the same day it passed through the legislature, is purported to cut over 3,500 legal immigrants from medical assistance. Medicaid is a government program that is funded equally by federal and states funds. The legislation is a budget-cutting measure that will save Colorado \$1.3 million this year and about \$8 million next year.

The ACLU argued that the Supreme Court has repeatedly ruled that this kind of discrimination against legal immigrants is a direct violation of the Constitution. They contended that states do not have the power to save money by adopting their own restrictions that punish legal immigrants who are entitled to live here and who qualify for assistance under federal law. The ACLU had hoped to get an emergency order blocking the legislation from going into effect at midnight April 1, but the federal judge did not rule on the restraining order and the law is now in effect.

The class action suit was filed on behalf of eight legal immigrants who benefited from Medicaid. It held that the government should conduct individual investigations before

cutting off benefits, because some immigrants may be eligible for benefits based upon work histories. The ACLU claimed that the state officials have failed to inform individuals of their right to appeal. Before the lawsuit was filed, some elderly immigrants living in nursing homes had already been served eviction notices.

15. Legislative Update

The following bills were recently introduced in the Congress:

- H.J. Res. 44, sponsored by Rep Mark Foley [FL] (introduced 3/31/2003), proposes an amendment to the Constitution of the United States to provide that no person born in the United States will be a United States citizen unless a parent is a United States citizen, or is lawfully admitted for permanent residence in the United States, at the time of the birth. Latest Major Action: 3/31/2003 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:hj44ih.txt.pdf

- HR 1416, sponsored by Rep Christopher Cox [CA] (introduced 3/25/2003), would make technical corrections to the Homeland Security Act of 2002. Latest Major Action: 3/28/2003 House committee/subcommittee actions. Status: Ordered to be Reported (Amended) by Voice Vote.

http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:h1416ih.txt.pdf

- HR 1452, sponsored by Pete Sessions [TX] (introduced 3/26/2003), to provide that the language of the text of United States passports is written in English and Spanish. Latest Major Action: 3/26/2003 Referred to House committee. Status: Referred to the House Committee on International Relations.

http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:h1452ih.txt.pdf

- HR 1464, sponsored by Joe Baca [CA] (introduced 3/27/2003), to enhance the security and efficiency of the immigration, refugee and asylum, and naturalization functions of the United States Government. Latest Major Action: 3/27/2003 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:h1464ih.txt.pdf

- HR 1515, sponsored by Jeff Flake [AZ] (introduced 3/31/2003), would provide for reimbursement for unreimbursed costs of emergency medical care for

aliens paroled into the United States for medical reasons. Latest Major Action: 3/31/2003 Referred to House committee. Status: Referred to the House Committee on Energy and Commerce.

http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:h1515ih.txt.pdf

- HR 1519, sponsored by Rep. Peter King [NY] (introduced 3/31/2003), would amend the Immigration and Nationality Act to reauthorize the State Criminal Alien Assistance Program. Latest Major Action: 3/31/2003 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:h1519ih.txt.pdf

- HR 1567, sponsored by Rep. Nathan Deal [GA] (introduced 4/2/2003), would amend the Immigration and Nationality Act to deny citizenship at birth to children born in the United States of parents who are not citizens or permanent resident aliens. Latest Major Action: 4/2/2003 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

<http://thomas.loc.gov/cgi-bin/query/z?c108:H.R.1567>:

- S. 710, sponsored by Sen. Patrick Leahy [VT] (introduced 3/26/2003), would amend the Immigration and Nationality Act to provide that aliens who commit acts of torture, extrajudicial killings, or other specified atrocities abroad are inadmissible and removable and to establish within the Criminal Division of the Department of Justice an Office of Special Investigations having responsibilities under that Act with respect to all alien participants in war crimes, genocide, and the commission of acts of torture and extrajudicial killings abroad. Latest Major Action: 3/26/2003 Referred to Senate committee. Status: Read twice and referred to the Committee on the Judiciary.

http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:s710is.txt.pdf

To see what other immigration-related legislation is pending in Congress, visit our legislative chart at www.visalaw.com/advocacy.html.