

Siskind's Immigration Bulletin
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Siskind Susser serves immigration clients throughout the world from its offices in the
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1. Openers

Dear Readers:

The major immigration story this week is the Department of Homeland's decision to temporarily pull the plug on the Transit Without Visa and International-to-International programs that have been in place in this country for more than half a century. These programs allow passengers coming from outside the US to connect in the US to flights to other international destinations without having to have a visa. The Bush Administration received very specific warnings that terrorists might try to exploit security holes in the program to hijack a plane in the US. So they have decided to temporarily halt the program while they review the security gaps. We think this is a prudent step as long as the suspension is truly viewed as a way to fix the problems rather than an excuse to kill an economically important program.

Readers may be interested in knowing that I was invited by USA Today to author an editorial in today's newspaper on the end of the transit programs. The articles are linked on the web at http://www.usatoday.com/news/opinion/editorials/2003-08-03-oppose_x.htm. I know there are many opinions on this issue and I'd be interested in getting reader feedback. Feel free to email your thoughts to me at gsiskind@visalaw.com.

The nearly 40,000 readers of this newsletter represent a wide range of expertise on immigration. Many people are completely unfamiliar with immigration and our newsletter is the vehicle for educating themselves on the topic. Our ABCs articles are designed to help novice readers and others learn the basics of immigration law. Today we get back to the real basics - understanding the terminology of immigration law. We begin a series of ABCs article this week helping readers to understand immigration terms.

We also report this week on hearings in Congress on the L-1 visa. Some in Congress are concerned that employers are using the L-1 visa to avoid hiring otherwise qualified US workers. We don't think there are any "legs" to this theory and, hopefully, rashly considered changes are not on the way. My friend Steve Yale-Loehr was invited to testify. Steve is one of America's brightest immigration lawyers and is also the co-author with me of the J-1 Visa Guidebook.

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 – Immigration Terminology, Part I

This is the first in a series of articles on immigration terminology. We will start with basic terminology and then move into more complex terminology that may be used in specific circumstances.

Adjustment of status – The process in which someone who holds nonimmigrant, refugee, or parolee status, is allowed to apply for immigrant or lawful permanent status while they are in the United States.

Alien – A person who is not a national or citizen of the United States.

Asylum – The status sought by a person physically present in the United States. The individual must have a well-founded fear of persecution on the basis of race, religion, nationality, membership in a particular social group, or political opinion, if made to return to his or her country of nationality. If the person does not have a country of nationality, then they must fear these grounds upon returning to their last place of habitual residence. One of these five grounds of asylum must be proven in order for the individual to win an asylum claim. Asylees differ from refugees in that the asylee has already entered the country when they are trying to obtain status.

Conditional Permanent Resident Status – A status conferred on an alien spouse and children at the time of obtaining lawful permanent residence, such status having been obtained: (1) on the basis of a marriage to a U.S. citizen or permanent resident spouse entered into less than two years prior to obtaining said status, or (2) as an immigrant investor, in which case it applies to the investor and the members of his or her family.

Deportation – When an alien who has violated immigration laws is found to be removable from the United States.

Dual Nationality – Possessing two citizenships simultaneously. Dual nationality can occur by birth in one country to citizens of another country, by marriage to a foreign national, or by foreign naturalization. While the U.S. government does not endorse dual nationality, it does recognize its existence and does not require a foreign citizen to give up his or her other nationality in order to become a U.S. citizen. Some countries, such as Germany, do not allow dual nationality and require relinquishment of any other nationality.

Green Card – The popular name for the Alien Registration Receipt Card, which is given to individuals who become legal permanent residents of the United States. While the card was once green, hence earning the nickname, it is presently pink. The card serves as a U.S. entry document, enabling permanent residents to return to the U.S. after temporary absences. You can apply for the green card anywhere, but you can only actually receive the green card inside U.S. borders. In addition, the card and the benefits that come along with it are permanent, therefore you cannot lose it unless you abandon your U.S. residence or commit certain types of crimes. However, a new, updated green card must be applied for every ten years.

Immigrant – Any person who is residing in the United States as a legally recognized and lawfully recorded permanent resident. This is what every alien seeking entry to the United States is presumed to be unless they prove they want entry on a nonimmigrant basis.

National – A person owing permanent allegiance to a state.

National of the United States – A citizen of the United States or a person who, though not a citizen of the United States, owes permanent allegiance to the United

States. Presently, the only noncitizen nationals of the United States are residents of the American Samoa and Swains Island.

Naturalization – When a person acquires nationality of a state after birth. Citizenship of a foreign state acquired after birth is not naturalization.

Nonimmigrant – A person coming to the United States temporarily for a specific purpose.

Passport – A travel document that allows a person to gain admission into a foreign country. The document should show the bearer's origin, identity, and nationality.

Refugee – A person that is unable or unwilling to return to their country of nationality because of a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. These individuals apply for status before coming to the United States.

Residence – An individual's one principal, actual dwelling place.

Special Immigrant – Common categories of special immigrants are workers for recognized religions, former U.S. government workers, and foreign doctors who have been practicing medicine in the United States for many years. There is an annual quota of 10,000 green cards that can be given to special immigrants.

Status – The name for the group of privileges you are given when you receive immigration benefits, either as a permanent resident or a nonimmigrant. A person holds their status as long as they are on American soil. Once they leave American soil, they may lose that status. Permanent resident status is not lost by a temporary absence from the United States.

Visa – A stamp placed in your passport by a U.S. consulate outside of the United States. All visas, which can be either immigrant or nonimmigrant, serve as entry documents. Except for a few types of visa renewals, visas cannot be issued inside American borders; therefore, you must be outside the U.S. to get a visa.

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 came to the United States in 1999 on a student visa to do my Masters, got my practical training card in 2000 April, and worked ten months for a financial institution, in 2001 February I got married to a permanent resident, and he filed Visa for a fiancée/ orphan for me. My question is that our application for a fiancée visa was postmarked and mailed on the same day as the practical training card was going to expire - did I go out of status?

A - Unfortunately, marrying a permanent resident and filing an I-130 does not keep you in legal status. There is a quota in the visa category for spouses of permanent residents and until your case has moved to the front of the line, you are not entitled to remain in the US. The only way to stay would be to remain on a visa in your own right such as a student or work visa. Obviously talk to an immigration lawyer here.

Q - My friend's OPT will expire 07/04. Since the H1b quota will drop to 65,000 starting from 10/03, is it a good idea to start applying for H1b now?

A - I think it would be a good idea to apply for the H-1B visa as soon as possible given the uncertainty of visa availability. Of course this assumes that the job your friend is seeking is subject to the annual H-1B quota. University jobs, for example, are not. Ideally, your friend could wait to make sure that the job where she is working is really the best one for her. But being so cautious could mean losing out on a visa all together.

Q - My finacee recently filed for a H1b thru' her company. She was here on a J1 visa which expires on august 8th. After the filing we received a request for evidence which we duly replied to. We are still awaiting a decision on the filing. My question is...if the petition is denied what are her options? Can she file to reopen and then stay in the country till a decision is reached? Or does she have to return to her country and wait for a decision.

A - If the decision is denied, your fiance is not entitled to remain in the US merely because she filed a motion to reopen or an appeal of the decision. She could take the risk of staying, however, and if she wins, she would generally be approved back to the date of the original application. But if she loses, it is as if she was out of status back to the date of the original denial. So the risks are real here.

Q - I'm on an F1 visa which will expire next February. I just graduated from college in May of 2003. However, the college that I was at has not done the necessary adjustments to incorporate the SEVIS. As a result, when I filed for OPT, a letter was sent back to me requesting a SEVIS I-20. What can I do if the school did not issue international students with new SEVIS I-20s? Its been over 4 months since my application and time on my visa is reducing. Im I able to continue with OPT even if my visa expires?

A - You have 12 weeks from the date of that letter to send a SEVIS I-20 to the government for your OPT application. If your school is approved by that time, you will be able to get an OPT. But, even if you do, you will probably lose several months of this due to the delay. If your school is not approved on time, then you face the risk of being out-of-status. In that case you may want to change your

status to a different immigration classification or leave the country. Or, if you are interested, you may want to transfer and start a new program (preferably graduate or another undergraduate concentration) in a SEVIS approved school. That way you will be eligible for OPT at the time that you graduate.

Q - I've been denied several times of a b1/b2 visa eventhough my objective is to attend a conference/training.why is that?

A - Basically, you have not convinced the consulate that you will leave when the conference is over. There could be a variety of problems - not enough assets in your home country, not a strong enough job in your home country, bad conditions in your country that are resulting in many people overstaying visas in the US, not enough family in your country or close relatives in the US, etc. Hard to say for sure, but once you are denied the B visa, it is very rare to get a consulate to change its mind. You probably need to look at other visa categories if you want to come to the US.

4. Border News

Agents arrested fifteen immigrants accused or convicted of sex crimes against children in Charlotte this week as part of Operation Predator. The operation was created in order to protect children from sex crimes and other related threats, such as child pornography. The fifteen arrested men are currently in prison, awaiting deportation.

Rochene Charles and Gabriel Joseph have been detained in prison since October 2002, when they and over 200 Haitians arrived in the U.S. by boat. Four months ago, the two were granted political asylum: one had left Haiti after the killings of his brother and sister and the other fled after his home was attacked by government supporters. Their lawyer has petitioned for their release on humanitarian grounds. Charles suffers from severe chest and stomach pain and Joseph suffers from depression and post-traumatic stress. Of the approximately 200 Haitians, 93 have been deported and 32 remain detained in prison.

Since the Department of State learned that Haiti was a staging point for Pakistanis and Palestinians hoping to illegally enter the U.S., in order to protect national security from a potential terrorist threat, the Bush administration has had a policy of detaining Haitian asylum seekers until they are deported or granted asylum. Officials say the policy discourages Haitians from migrating illegally to the U.S., as a mass migration would require the Coast Guard to focus on illegal migrants instead of protecting U.S. borders.

In April 2003, Eliseo Saucedo Vasquez plead guilty to transporting illegal immigrants for profit resulting in the death of one of them, Epifanio Jose Maria Magdaleno. Saucedo was sentenced on July 25 to three years and one month in federal prison. On May 17, 2002, Saucedo took thirteen immigrants on a daylong walk across South

Texas to avoid the Border Patrol in weather that reached 94°. He then drove the immigrants to Houston, leaving Magdaleno and his nephew near a hospital. Magdaleno died of hypothermia soon after entering the hospital. Saucedo's attorney argued that Saucedo should not be held accountable for the death because he tried to get the victim to a hospital. The judge disagreed, but chose a sentence in the middle of the possible range because Saucedo did try to help the victim.

Felipe de Jesus Machado Rehes of Juarez, Mexico, suspected of shooting his wife, her cousin, and her friend, bonded out of jail in Chihuahua and disappeared. Authorities believe he may have fled to the U.S. along with two accomplices, Favio Valente Espinoza Vega and Juan Carlos Valdez Garcia.

On July 16, 12 Cubans attempted to reach the U.S. in a 1951 Chevrolet truck, which had been converted for seagoing use. The migrants attempted to cross the shark-infested waters in the truck by adding a buoyant pontoon of 55-gallon drums and a propeller to the drive shaft. Intercepted 40 miles from Key West, the twelve were returned to Cuba, according to U.S. policy, which returns migrants caught at sea to Cuba, while those who make it to land are permitted to stay in the U.S.

In 1997, Jose Alvarado pleaded guilty to fondling a 10-year old boy in Montgomery County and was deported to his native El Salvador. While this should have barred him from reentering the U.S., on July 24, Alvarado was again indicted by a Montgomery jury for raping a 5-year old boy. Immigration officials would not comment on how or when Alvarado reentered the U.S.

Four Georgian citizens, three of whom were in the U.S., were arrested for forging travel documents and illegally sending people from Georgia to the United States. The four will be tried in Georgia and the several dozen people who were sent from Georgia to the U.S. may be deported.

Some 150 Somali Bantu refugees will be settled in Sioux Falls during the next two years. Sioux Falls School District officials have been studying Somali Bantu culture in preparation for the new arrivals. The refugees will join a large population of refugees already living in the area. A total of 12,000 Somali Bantus are expected to be relocated to fifty U.S. cities by the end of 2004. Somali Bantu families have been living in refugee camps along the Somali-Kenya border for the past decade.

5. News From The Courts

American-Arab Anti-Discrimination Committee, ET. Al., vs. John Ashcroft

The petitioners are Lebanese citizens who obtained false advance parole papers, which allowed them to enter the U.S. All of the petitioners face removal and some

were already removed. The petitioners filed an application for a writ of habeas corpus challenging BCIS' decision to begin expedited removal proceedings. Expedited removal proceedings would allow the petitioners to be deported based upon the decision of an immigration officer without the opportunity for further review. The Court found that BCIS' use of expedited removal procedures violated the petitioners' rights to due process. The petitioners also filed a Supplemental Emergency Motion for Writ of Habeas Corpus and For Release From Detention, which were both denied by the Court.

A criminal conspiracy from September 1998 to September 2000 resulted in about 130 immigrants entering the U.S. without valid documentation. An employee at the BCIS District Detroit Office, Janice Halstead, conspired with Zoha Madarani to bring aliens into the U.S. who were residents of Lebanon or Yemen and not legally eligible to enter the U.S. It is unclear whether the aliens were aware that they were illegally entering the U.S. All of the petitioners entered the U.S. with documents obtained from this conspiracy.

The petitioners argued that expedited removal proceedings would deprive them of due process. The respondents argued that the petitioners have "virtually no constitutional rights with respect to their applications or immigration status" because they did not technically enter the U.S. The Court ruled that excludable aliens, like all aliens, are protected by Due Process, and therefore, the petitioners could not be subject to expedited removal procedures. However, BCIS is still able to initiate regular removal proceedings. If the Bureau does initiate these proceedings, the petitioners would then be able to request their release.

6. Government Processing Times

There are no new times available this week.

7. News Bytes

Five defendants were sentenced for conspiracy to commit visa fraud in a Texas federal court last Friday.

The defendants, four Mexican national employees of the U.S. Consulate in Nuevo Laredo, Mexico and one U.S. citizen visa broker, were convicted of running a visa-selling scheme in Nuevo Laredo after a seven-month long investigation that resulted in the closing of the Consulate office in Nuevo Laredo.

The scheme involved Mexican citizens buying U.S. visas without required interviews at the Consulate and without determinations that the citizens were qualified for visas. The duties of the four Consulate workers included interviewing applicants for U.S. visas, reviewing the applications, and approving non-immigrant visas for travel to the U.S.

The FBI estimates that fewer than 2,000 of 200,000 U.S. visa applicants will be rejected due to terrorism concerns this year. According to the Bureau, nearly 85% of the applicants will be granted visas after three days of stringent background checks. Currently, 125 FBI agents work full time conducting the background security checks.

Arif Durrani, a Pakistani-born man convicted of selling anti-aircraft missile parts to Iran during the Iran-Contra scandal recently asked a Connecticut federal judge to reopen his case. Durrani served five years in prison for his 1987 conviction of violating the Arms Export Control Act and was deported in 1998.

Durrani claims that he was a part of the U.S. effort to exchange arms for American hostages in Lebanon and that Oliver North, former National Security Council aide, told him to ship the missile parts to Iran.

Durrani wants the court to review more documents in order to prove that he was ordered to sell the missile parts by North and other U.S. officials. Durrani wants his conviction reversed so that he may return to the U.S.

Migrants displaced from the Cote d'Ivoire may now qualify for assistance under Section 2(b)(2) of the Migration and Refugee Assistance Act of 1962 as amended.

A report issued last Thursday suggests that the White House was more specifically warned about a possible al-Qaida attack than previously thought.

The report also cites a CIA memo that there was "incontrovertible evidence" that Saudi individuals and members of the Saudi government provided financial assistance to al-Qaida members in the United States.

Recent human smuggling cases have shown that smugglers caught and convicted receive relatively short and weak sentences.

Some high-profile cases do result in longer sentences, especially when smuggled immigrants have died. Most smugglers, however, receive sentences of less than five years, and many of the "operation kingpins" do not even receive convictions.

Some experts believe that the weak sentence guidelines results from public opinion towards illegal immigration.

The U.S. Department of Labor recently decided a case arising under the Labor Condition Application provisions of the Immigration and Nationality Act.

The Act provides that an employer may hire nonimmigrant workers from "specialty occupations" to work in the United States for set periods of time. These workers are

issued H-1B visas upon the employer's filing of a Labor Condition Application (LCA) with the Department of Labor. The LCA must detail the number of aliens to be hired, the occupational classification, the required wage rate, the prevailing wage rate and the source of that data, the date of need, period of employment and working conditions for the H-1B visa employee. Once the LCA is reviewed and certified by the Department of Labor, the BCIS may then approve the H-1B visa petition.

Employers are required to pay H-1B nonimmigrant workers beginning the date when the nonimmigrant enters employment with the employer or 30 days after the date the nonimmigrant is admitted into the U.S. If, however, the nonimmigrant worker does not work for the employer due to non-employer related circumstances, the employer is not required to pay the wage for that period. Payment also is not required "If there has been a bona fide termination of the employment relationship." The employer must then notify the INS of the terminated relationship.

During the 2003 fiscal year, BCIS will begin issuing the newly redesigned travel documents for Form I-327, Permit to Reenter the U.S., and Form I-571, Refugee Travel Document. The new travel documents are intended to reduce production time, improve customer service, and contain better security features. The new travel documents will look similar to a U.S. passport.

Three Bureau of Immigration and Customs Enforcement (ICE) special agents received the Attorney General's Award for Exceptional Service, (the Justice Department's highest award), for their roles in investigating and neutralizing a terrorist cell with connections to Al Qaeda in Lackawanna, New York. The recipients of the award were: ICE Special Agent James J. Higgins, Jr., ICE Special Agent Lawrence D. Krug and ICE Special Agent Michael J. Szrama.

On July 30, the Bush Administration launched USA Services in order to aid U.S. citizens in contacting the federal government and quickly receiving answers. By calling 1-800-FED-INFO or composing an e-mail at FirstGov.gov, citizens will no longer have to try and figure out which federal agency they should contact for inquiries on information and government services. USA Services is a partnership of twelve different departments and agencies that will provide quality and timely responses to citizens' inquiries.

Department of Agriculture employee Hsin Hui Hsu and his wife, Jing Ling Wu Hsu, pleaded guilty to criminal charges in their role in a visa fraud scheme that resulted in \$82,000 in payments and 99 illegally obtained visas for Chinese nationals. As part of Hsu's official duties, he had the authority to invite groups of Chinese nationals who were agricultural specialists to visit the U.S. to meet and consult with U.S. experts in the same of similar fields. Hsu's co-conspirators would find Chinese nationals who wanted to visit the U.S. but were ineligible for non-immigrant visas. Hsu was provided with their names and false biographical data, which he would use in order to persuade U.S. consulates in China that the Chinese nationals were part of a delegation of agricultural experts. The conspiracy lasted from late 1999 to April

2002. Both Hsu and his wife face a maximum sentence of five years in prison. Sentencing is scheduled for October 22, 2003.

On July 28, Mariska Trisanti and her husband, Herri Nasution, pleaded guilty to federal charges that they held two domestic workers against their will for four years. Trisanti faces two counts each of involuntary servitude, visa fraud, and harboring the victims, who were illegal immigrants from Indonesia. Nasution faces two counts of harboring illegal immigrants.

8. International Roundup

Immigration to Canada fell by about 8.5% between 2001 and 2002, says a new study, adding the downward trend was most significant in Toronto, which barely retained its position as the top North American destination for newcomers. The study suggests a growing inability in the federal immigration department to process visa applications from skilled workers during the last two years. It also reports a decline in the number of Canadians taking residence in the United States due to poor economic conditions in America. Much of the overall decline in the number of immigrants to Canada was attributed to the fall in the number of people accepted from Asia and the Pacific.

There has been an increase in the number of Afghan refugees on hunger strike in Ixelles Saint Croix church in the United Kingdom. Several have been transferred to a nearby hospital. This group has been protesting since last Wednesday in reaction to the Refugee Commission's decision to repatriate over a thousand Afghan asylum seekers over the next nine months. The Commissioner General for Refugees, Pascal Desment, said that the European Union has estimated that it is time for a repatriation operation to begin.

Twelve men will appear in court today after a brief but violent clash between local men and Iraqi asylum seekers in the United Kingdom last weekend. The men are charged with several public order offenses, including carrying offensive weapons, causing criminal damage, and racially aggravated harassment. The incident is the latest in a series of clashes in Hull, where about 3,000 asylum seekers are believed to be living.

The captain and eight crew members of a South Korean freighter were arrested last weekend for allegedly trying to smuggle 11 foreigners into Japan. The 11 people from five different countries tried to enter Japan without valid passports while traveling aboard the 2,628-ton freighter Jangwon-1.

Border police in eastern Romania detained five illegal immigrants from India who had crossed the border from Moldova. The men were found about 10 kilometers from the Moldovan Border. This is the third group of Indian immigrants captured by Romanian border patrol recently.

Former President Gustavo Noboa, under investigation for the mismanagement of Ecuador's foreign debt negotiations, filed for political asylum in the Dominican Republic last Monday. Noboa said he couldn't trust Ecuadorian investigators because they are under the thumb of his political enemies. In May, former President Leon Febres Cordero, now a legislator, asked the attorney general's office to investigate Noboa's handling of the debt negotiation, which he affirmed cost Ecuador \$9 billion.

Iris recognition machines, which can identify people by reading the distinctive pattern surrounding the pupil of the eye, will be installed at 10 British airports within a year. The final approval for Iris Recognition Immigration System (Iris) will depend upon the cost. The program, built after a trial at Heathrow last year, is likely to be focused in its initial phase on international commuters. Scanning cameras linked to a database will confirm the identity of previously enrolled passengers speeding them up past immigration queues. The drive to get Iris up and running suggests that there is support for iris recognition technology but no decisions have yet been made on whether to incorporate it into either passports or identity cards. Those decisions are likely to depend on the cost of launching a national enrollment program.

A group of suspected child traffickers were arrested in London last week in an offensive involving more than 200 police officers. In total, 21 individuals were detained in the operation launched by detectives investigating the murder of a young boy. Officers raided nine addresses in east and southeast London early in the morning. Most of those detained are Nigerian nationals. They were arrested on suspicion of immigration violations, people trafficking, and passport offenses. They are suspected of bringing youngsters and adults through Europe. Commander Andy Baker of Scotland Yard stated that children were brought to the U.K. on false documents to carry out an elaborate benefit fraud, "slave" labor, or used in the sex industry.

9. Legislative Update

The following bills were recently introduced in Congress:

[H.R.2843](#), To adjust the immigration status of certain Colombian and Peruvian nationals who are in the United States. Sponsor: Rep Diaz-Balart, Lincoln [FL-21] (introduced 7/24/2003) Latest Major Action: 7/24/2003 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

[H.R.2853](#), To designate Colombia under section 244 of the Immigration and Nationality Act in order to make nationals of Colombia eligible for temporary protected status under such section. Sponsor: Rep McGovern, James P. [MA-3]

(introduced 7/24/2003) Latest Major Action: 7/24/2003 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

H.R.2899, To establish two new categories of nonimmigrant workers, and for other purposes. Sponsor: Rep Kolbe, Jim [AZ-8] (introduced 7/25/2003) Latest Major Action: 7/25/2003 Referred to House committee. Status: Referred to the Committee on the Judiciary, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

[S.1443](#), A bill to amend part A of title IV of the Social Security Act to reauthorize the temporary assistance to needy families program, and for other purposes. Sponsor: Sen Carper, Thomas R. [DE] (introduced 7/22/2003) Latest Major Action: 7/22/2003 Referred to Senate committee. Status: Read twice and referred to the Committee on Finance.

[S.1461](#), A bill to establish two new categories of nonimmigrant workers, and for other purposes. Sponsor: Sen McCain, John [AZ] (introduced 7/25/2003) Latest Major Action: 7/25/2003 Referred to Senate committee. Status: Read twice and referred to the Committee on the Judiciary.

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

10. Senate Subcommittee On Immigration Holds Hearing On L-1 Visa Program

Last week the Senate Subcommittee on Immigration held a hearing entitled "The L1 Visa and American Interests in the 21st Century Global Economy." The L1 visa, which allows US-based companies with international operations to transfer employees from their foreign offices, has recently come under scrutiny from some who point out examples where the visa category has been abused.

Some in high tech industries, such as Patricia Fluno, a former Siemens Technology employee who testified, said the visa is being misused by companies who are outsourcing their L1 workforce, and thus eliminating job opportunities for the domestic workers. Others in the industry disagree. The Information Technology Association of America (ITAA) released a white paper saying the program is "critically important to U.S. multinational information technology firms as they compete globally." The ITAA said there are areas that must be improved but that the best way to deal with concerns is improved administration, rather than "abolition or major modification." The ITAA paper suggests that the government clarify the definition of "specialized knowledge" so that it could be better determined if applicants qualify for the L-1.

Speaking in support of the L1 were current and former members of the American Immigration Lawyers Association, including AILA Business Committee Chair Stephen Yale-Loehr and former AILA General Counsel and Past President Daryl Buffenstein.

Yale-Loehr said the criticism surrounding the L-1 has brought about several measures that would "limit severely the effectiveness of the L visa as a tool for

facilitating both foreign investment and job creation... thereby diminishing the economic competitiveness of US companies." He also rejected the notion that the program last limited job opportunities for the domestic workforce, saying, "properly administered, the L-1 visa category can offset concerns about globalization by keeping and adding jobs here."

Buffenstein said he sympathized with those who have lost jobs during the economic downturn, but emphasized that the L-1 is "critical to the ability of companies to transfer needed managerial and specialized expertise to their United States operations." Congress is in a position of disadvantage on the subject, he warned, because of a "lack of clear information" which could lead to "legislation that is harmful to the United States economy without protecting American workers."

Austin T. Fragomen, an attorney speaking on behalf of the American Council on International Personnel (ACIP), said the allegations of abuse involve only "a limited group of L-1B specialized knowledge workers and companies," and that any corrections to the program should be targeted at that segment alone and not the L visa category as a whole. As with the ITAA paper, Fragomen said the ACIP believes the most effective approach to correct any problems with the program would be to "clearly delineate what does and does not constitute" the term "specialized knowledge," and added that precertification programs, such as the blanket L, could be used to limit potential cases of abuse.

Beth Verman, president of a staffing group, testified on behalf of the National Association of Computer Consultant Businesses (NACCB). Verman said she was frustrated that her firm's progress "has been hampered because of unfair competition with large foreign-based consulting companies that are not playing by the same set of rules my domestic company plays by." She said it appears that "these companies are circumventing many of the requirements of the H-1B visa program... with no obligation to pay a prevailing wage." The NACCB proposed a list of legislative changes that would define the term "specialized knowledge" to require "an advanced level of skill and expertise which surpasses that ordinarily encountered in a particular field" and that the L-1 applicant "must remain under the sole and exclusive control of the petitioning organization."

The Senate also heard from other critics of the current L program, including the union advocacy group AFL-CIO. Michael Gildea, Executive Director of the AFL-CIO's Department for Professional Employees, said, "now is the time and this is the venue to develop a more holistic, coordinated federal policy" for foreign workers, and said he urges the Subcommittee to "address these and other public policy anomalies as [they] consider badly needed reforms in both the L-1 and H-1B programs." The AFL-CIO has no objection to the original idea behind the L-1, Gildea said, but said the unions "vehemently object to how this program has morphed into something that now victimizes highly skilled, well educated American professionals."

11. New Immigration Regulations Result In Reduction In Foreign Visitors

As a result of more restrictions on entering the U.S. due to post-9/11 security concerns, fewer foreigners are visiting the U.S. Foreign attendance at U.S. English-language summer classes has dropped by 30 percent. Arriving au pairs have been slowed by 10 percent. The world-famous Mayo Clinic, a magnet for international

patients, has seen a 23 percent drop in foreign patients since 2001. General visa applications have also dropped, resulting in fewer visa approvals as well.

And the visa-screening process is becoming even tighter. Approximately 8 million people apply for visas each year. Beginning August 1, 2003, a majority of those 8 million are required to have interviews in person at U.S. embassies. For foreigners, this new interview process can mean traveling far distances to get to a U.S. consular office, where lines are so long, consular staffers have very little time to conduct an interview.

Defenders of the new restrictions argue that new immigration policies have protected the U.S. from domestic terrorist attacks since 9/11. However, with the visa application process becoming more difficult, and the new policy of interviews in person, many foreigners, be they artists, scholars, or patients, are giving up on America and taking their talents and business elsewhere. Other countries, such as Germany, are taking advantage of the imposing U.S. process and are offering more lenient immigration procedures. There is growing concern that by restricting foreign visitors from entering the U.S., Americans can have a terror-free life, but lose the cultural and economic exchanges.

12. Republicans Propose Work Visa Bill in Congress

Senator John McCain recently introduced a bill that would remove the cap on the number of work visas issued. The bill would grant migrants similar rights as citizen workers and would also allow legal migrants the chance to apply for legal residency after three years. Illegal migrants already working in the U.S. may apply, but they go to the end of the H-4B visa line. They will stay at H-4B visa status for three years after paying a \$1,500 fee. After six years, illegal migrants may apply for legal residency.

The Land Border Security and Immigration Improvement Act of 2003 was introduced, according to McCain, in a response to growing terrorism concerns and increasing border crossing deaths. The act, McCain anticipates, will allow the Border Patrol to devote more time to potential terrorists and criminals crossing the border.

The visas will include photo identification cards, a feature the current visas do not have. It is designed to provide the Border Patrol with a legitimate enforcement tool.

The act will also apply to migrants that entered the country both legally and illegally before August 1, 2003.

The act does not apply to migrants convicted of misdemeanors or felonies on their records for breaking laws other than illegal entry or false identification.

13. Ridge Announces Citizenship and Immigration Ombudsman

Tom Ridge, the Secretary of Homeland Security, announced the appointment of Prakash Khatri of Florida to serve as the Citizenship and Immigration Ombudsman at the Department of Homeland Security.

Khatri was previously the Manager for Immigration and Visa Processing for the Walt Disney World Co. and prior to that he ran a private practice as an Immigration Law Specialist.

The Citizenship and Immigration Ombudsman is an advocate for the public and immigrants to the Department of Homeland Security for immigration issues. The Ombudsman is responsible for providing policy, planning, and program advice to the Secretary, Deputy Secretary, office heads, and other officials. The Ombudsman also is responsible for making recommendations to resolve justified complaints related to citizenship and immigration.

14. ICE Prepares for SEVIS Deadline

SEVIS is the government operated computerized system that contains information about foreign students and exchange visitors during their stay in the United States. Friday, August 1, was the deadline for U.S. schools and foreign students to file with the Student Exchange Visitor and Information System (SEVIS). To date, 5,937 educational institutions have complied and are able to accept foreign students. There are over 600 U.S. schools that have not yet filed applications or have filed late applications. Because of this, there is a concern that foreign students attending these schools will be denied entry to the U.S.

To relieve this situation, the Department of Homeland Security (DHS) will try to make every effort to facilitate the admission of foreign students and visitors in cooperation with a SEVIS Response Team and academic institutions, while also protecting national security. ICE is establishing a command center that will operate 24 hours-a-day, 7 days-a-week that will coordinate with schools across the U.S. ICE will work with the Department of Homeland Security (DHS) in addressing affected foreign students entering the U.S. ICE will also have technical and IT consultants ready to address any SEVIS computer systems issues that may develop.

ICE has also identified several possible scenarios that are likely to occur when foreign students enter the U.S. and has sent a memorandum to academic institutions about ICE responses to these scenarios. A SEVIS Response Team will work with Ports of Entry (POEs), Inspectors, Adjudicators, Investigators, schools, and students to resolve issues for those students with proper documentation (the school and the student are registered in SEVIS and the student has a SEVIS issued Form I-20) who are having problems entering the U.S. The Response Team will also try to obtain a SEVIS issued Form I-20 for those students who are registered in SEVIS along with their school, but do not have the SEVIS issued Form I-20, so the POE will admit those students. If the Response Team cannot get an I-20 from the school due to the short time frame, DHS may allow some students to enter on a temporary basis with the understanding that the issue must be resolved within a given time period. DHS may make certain exceptions for students whose schools did not file with SEVIS by the August 1 deadline on a case-by-case basis.

15. ACLU Challenges USA PATRIOT Act

On July 30, the American Civil Liberties Union (ACLU) sued the Justice Department and the FBI over Section 215 of the USA PATRIOT Act, which allows law enforcement to have easier access to business records, such as those in libraries, bookstores, and hospitals. The ACLU argued that the provision violates citizens' fourth amendment rights against unreasonable searches and seizures.

Before the PATRIOT Act became law, a narrow class of businesses was subject to the disclosure of records in foreign intelligence investigations. Among these businesses were airlines, car renters, and storage facilities. Section 215 allows law enforcement officials to have access to medical records, personal papers, and charity membership lists. The section can only be used in foreign intelligence investigations of people who are not U.S. citizens or lawful permanent residents.

Bookstores and libraries have objections about divulging patrons' reading preferences without probable cause of a crime. Representative Bernard Sanders of Vermont has introduced legislation to exempt libraries and bookstores from Section 215. The House ruled last week that an amendment to an appropriations bill based on Sanders' bill was out of order.

16. DHS Temporary Halts Transit Programs for International Air Passengers

[Readers may also want to read Greg Siskind's editorial on this subject in today's USA Today. The opinion piece can be found at http://www.usatoday.com/news/opinion/editorials/2003-08-03-oppose_x.htm]

The US Department of Homeland Security announced this weekend that it is temporary halting the 51 year old Transit Without Visa ("TWOV") and partner International-to-International ("ITI") program. The programs allow international air travelers to enter the US without visas for purposes of connecting to flights to other countries. Major US and international airlines use the program to route passengers through major airport hubs in the US. For example, a passenger flying from Taiwan to London might use the TWOV program to travel to San Francisco and catch a connecting flight to Europe.

The program had been under considerable fire since the 9/11 hijackings as a potential security risk. In December 2001, the Office of Inspector General at the Justice Department issued a report criticizing the INS for serious security holes in the program. Little was done by the INS and its successor agencies, however, to change the program and when it was announced last week by the Bush Administration that terrorists were considering exploiting weaknesses in the program to hijack planes, the Administration quickly acted.

The suspension was announced Saturday afternoon and became effective immediately. There are three exceptions:

- 1) TWOV or ITI passengers in flight at the time the regulation goes into effect will be allowed to continue in transit and depart the U. S. subject to inspection and an evaluation of risk.

2) Travelers who purchased their tickets as TWOV or ITI passengers on or before July 24, 2003, and who are scheduled to depart for transit through the U.S. before 12:01 a.m., Tuesday, August 5, 2003, need not obtain a visa to transit the U.S. For any flights scheduled to depart after 12:01 a.m. August 5 that include a stop in the U.S, however, these travelers must now either obtain a visa or change their travel itinerary to exclude a stop in the U.S.

3) If a person has already traveled through the U.S. as a TWOV or ITI passenger on the first leg of their trip, and uses the return portion of their round trip ticket before 11:00 a.m., August 9, 2003, they will be permitted to make a stop in the U.S. without a visa on the return portion of their trip. No provisions were announced for expediting visa processing for passengers flying after 11 am on August 9th.

Homeland Security Secretary Tom Ridge said "Our number one mission is to protect Americans and American interests from the threat of terrorism and we realize that terrorists aim to exploit our vulnerabilities and freedoms. The steps announced today, while aggressive, are an appropriate response to the threat. We know they will have an impact on international travelers, but we believe they are necessary in order to protect lives and property."

The program suspension will last for at least 60 days. During that time, DHS will attempt to identify measures that can be taken to further secure the programs from terrorists seeking to avoid consular processing. Comments from the public are being solicited and a decision will be made at the end of two months regarding the possible re-implementation of the program.

DHS Secretary Tom Ridge also mentioned on CNN's Late Edition on Sunday that the Visa Waiver Program was also under scrutiny. He emphasized, however, that the program was not in danger. Rather, additional security measures would be imposed on Visa Waiver passengers in the future.