

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:

I am writing this upon my return from the annual American Bar Association meeting
in San Francisco. Nearly 20,000 lawyers attended the annual meeting of one of
America's largest associations. The meeting was very busy for me since I am active
in the Law Practice Management Section of the ABA. I serve on the Council of the
16,000 member LPM section and also chair the section's book program.

I've plugged LPM in the past and am happy to do so again. For the several thousand lawyers that read this newsletter, LPM is THE place in the legal world to go for the latest information on law office technology, finance, marketing and management issues. The Section publishes dozens of superb books on these subjects (including my own LAWYERS GUIDE TO MARKETING ON THE INTERNET) as well as a comprehensive monthly magazine. LPM also produces excellent educational programs. I participated in two such programs in San Francisco. One was on Internet marketing. The other was on running a multicultural law practice for a multicultural clientele. If you're interested in joining LPM, email me at gsiskind@visalaw.com and I'll get you pointed in the right direction.

This week, we cover all of the latest news as well as provide an overview of the new BCIS Customer Service system that recently was unveiled. You can find that article in our regular ABCs of Immigration feature. We also cover the extension of Temporary Protected Status for Liberian nationals. The news is particularly timely given the turmoil taking place in that country.

We also are congratulate Karen Weinstock, a partner in Siskind Susser's Atlanta office on the publication of her opinion piece this past week by the Atlanta Journal-Constitution. The article concerned how new security measures are affecting immigrants. You can find the article at <http://www.visalaw.com/news/ajcKaren842003.htm>.

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 – The BCIS Customer Service Line

The BCIS Customer Service Line, or the National Customer Service Center (NCSC), was put into effect for visa applicants to ensure that there are no problems with their pending applications. The NCSC will take service requests from applicants who do not receive decisions or update about their case within the current projected processing time. Applicants are encouraged to stay up-to-date on the current processing times relevant for their visa applications. If an application is not processed within the current processing time, customers are encouraged to call the NCSC for an update. The NCSC will also take service requests for change-of-address, not receiving a receipt within a certain timeframe, and mistakes on the receipt notice.

When a customer calls the NCSC, the operator will refer the service request to the correct processing center for research. The processing center will then respond directly to the customer. There are nine different categories for referrals.

Within these categories, certain referrals apply to service center filings only. The first is the 'non-receipt referral.' This referral is taken if an applicant mailed their application to a service center more than thirty days before and has not received a receipt notice.

The next type is a 'no automated information referral.' In this instance, the referral is taken if the customer has a valid receipt number that will not work in the automated on-line and IVR systems.

The 'non-delivery referral' is taken if CRIS indicates that the service center mailed a notice to the customer more than thirty days before, but the customer has not received it.

A referral regarding DOS review of a J-1 foreign residence waiver is taken if the applicant has not received a notice from the service center within sixty days after an interested agency or a 'no objection' letter was sent to a service center to waive the two year foreign residency requirement.

A 'change of address' referral is taken if the applicant has already moved and changed their address. (This applies for naturalization applicants and service center filings.)

An 'error correction' referral is taken if: there is a mistake or typo on a notice issued by a service center and/or an associated I-94 or there is a mistake or typo on a BCIS document.

There are also several referrals that do not apply to service center filings. A 'case status referral' is taken if the case is outside the processing center's current processing time for that type of case and the customer has not received an update within the last sixty days or an earlier referral was not answered within the referral processing time of thirty days.

A referral for a request to reschedule an appointment is taken if the customer has scheduled an appointment at a local office and claims that an emergency prevents them from appearing.

A referral is also taken if an I-129 petitioner or representative needs to delete a beneficiary or request that a different consulate or POE be notified.

The referrals explained above are deemed to have higher priority than other service requests. For this reason, NCSC will explain to customers whose service requests to not fall into one of these referral categories how to submit a request directly to the appropriate service center. For customers who request that original documents be returned after an application is approved or denied, NCSC will explain how to submit Form G-884 and a copy of the receipt or approval notice to the service center. In the case where a customer feels that there was a technical error, such as receiving an RFE even though the requested information was already submitted, or an incorrect decision, NCSC will advise callers of existing appeal or motion procedures and inform callers how to write or fax the service center. For special or expedited processing requests, NCSC will inform callers how to write or fax the service center. If a customer's representative or attorney has a change-of-address, NCSC will explain how to write directly to a service center to provide the new address.

The NCSC service is available in both Spanish and English. The NCSC telephone number is 1-800-375-5283 or 1-800-767-1833 (TTY). The hours of operation for automated service are twenty-four hours a day, seven days a week. For live assistance, customers in the U.S. can call Monday through Friday from 8:00 a.m. to 6:00 p.m. local time (8:00 a.m. to 5:00 p.m. local time in Alaska, 8:00 a.m. to 4:00 p.m. local time in Hawaii, 9:00 a.m. to 6:00 p.m. local time in Puerto Rico and the U.S. Virgin Islands and 6:00 AM to 11:00 AM local time Tuesday through Saturday in Guam). Applicants who live outside of the U.S. should contact the nearest U.S. embassy or consulate. For more information, check the NCSC website: <http://www.bcis.gov/graphics/services/NCSC.htm>.

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 would like to apply for a family based immigrant visa, here is my situation. My brother is a citizen, but I am here as F1 student and planning to graduate on December 2003 with my BS in computer science. My question is if i apply for family based immigrant visa, can I get the adjustment of my status during the application process. Or do I have to go back to my country after I finish my degree and wait for the result of my status? thanks

A - Your brother can only apply for you in the Family 4th preference category. That category is backlogged at least 12 years and you are not entitled to apply for adjustment until you get to the front of the queue. So it will be many years before you likely will see much of a benefit from that petition. If you can manage to stay on your own visa in the US while you wait, that's fine. But you cannot stay in the US merely because an I-130 filed by your brother is working its way toward being current.

Q - In one of your replies in the last "ask visalaw.com", you mentioned that university jobs are not subject to the upcoming H1b quota starting 10/03. Does this mean that when I apply for an H1b visa as a "postdoctoral fellow" at a university, I will not be put in the "first 65,000" entry list? I have not heard this exception for "university positions" before. Is this something new?

A - You are correct. If your employer is a university, you are not affected by the H-1B quota. This has been the law since 2000. Since the H-1B quota has not been reached in the last few years, most people are not aware of this.

Q - I'll be applying for u.s. citizenship in a year. Upon applying, can i petition my mom at the same time or should I wait until i become a sworn citizen? My mom is out of status (5 years). Can I petition her still when I become a citizen?

A - You must be a sworn in citizen to apply for a parent's green card. If your mother entered the US legally and became illegal later, once you become a citizen, you should be able to sponsor your mother under INA Section 245(a) of the Immigration and Nationality Act.

Q - Me and wife are both born in the Philippines but our children are born in Kuwait. are we eligible to apply with the upcoming DV 2005 by charging the country of birth to our children?

A - Unfortunately, you cannot qualify for the lottery merely because your children are born in a country that is eligible. You can charge to the nationality of a spouse and, in certain cases, to the nationality of your parent. But not your children.

Q - My parents are citizen of USA and they filed petition for my immigration in 1998 and still waiting, at that time I was unmarried and my age was 29 years. Now my age is 33 years and I got marriage. Please advise and let me know that:- 1) How I , or my parents (petitioner) can change the preference or status of application / petition submitted in 1998? 2).Also let me know about V1 and V2 visa ? I along with my Husband (Spouse) are qualified for the V1 and or V2 visa ? It must be note that my age is 33 years and I am married.

A - You don't need to refile your I-130 petition just because you married unless your parents were green card holders when they applied and you married BEFORE they got their citizenship. I presume that is not the case here. You automatically convert from the First Preference Category to the Third Preference category. You need to now track yourself in that category. The good news is that you still get to claim the 1998 priority date you had when your parents filed initially. So when that date is current, you could request the State Department proceed with processing your green card. As for the V visas, that is for spouses of permanent residents. It should not apply to your case.

Q - My F2A petition has been filed by my LPR Wife in year 2002. Please let me know that, will i be eligible to apply for V Visa after 3 years of petition. As per current criteria of V visa i am not eligible. Is V visa deadline going to extend another 3 years, so that people like me can get chance.

A - Unfortunately, V visas are only eligible to people with I-130 petitions filed before December 20, 2000. We have not heard any news indicating that the V visa rules will change anytime soon.

Q - I have graduated with a MS degree in Computer Science from a state university in December 2002. I am currently on my optional practical training and it expires in January 2004. I have set up my own "S" corporation and am working for my own business now. I would like to know if I would be able to sponsor myself through my own company for a H-1 visa? Please advice.

A - In theory, there is no reason why someone self-employed cannot have their company file for an H-1B visa. The challenge is typically in proving to the BCIS that the company has the financial capability of paying you the prevailing wage. You'll need to show adequate capitalization and cash flow to meet this requirement. Also, qualifying for a green card is usually more difficult since the most common strategy - the labor certification petition - is typically not available to people who have an ownership interest in the petitioner.

Q - Dear Mr. Siskind, I read your newsletter regularly. I understand that once the 485 is filed for more than 180 days, the applicant can switch to a similar job. But what if the applicant is laid off and cannot find a job?

A - The question is an interesting one. Congress never clearly explained their intentions when they created the 180 day rule and the INS/BCIS has also not issued a regulation which clears matters up. The law states that as long as an adjustment application is pending for more than 180 days, it can remain alive if the applicant finds another job in the same or a very similar occupation. There are two different ways you can interpret the law. First, it might mean that as long as an applicant remains with an employer for 180 days, then the applicant can switch jobs. It might also mean that as long as the BCIS takes more than 180 days the applicant can move employers, the applicant will not be in trouble if a job change occurs. This latter interpretation means that a layoff or job change before 180 days would not be a problem as long as the BCIS takes six months on the adjustment (which is a given based on their normal processing times). You would definitely be better off following the more conservative interpretation and stay with an employer for six months before switching. But if that is not possible, you can at least make a good argument for the other interpretation.

Q - I came into the United States in 1998 on a B-2 Visa. I got married to a US citizen same year and applied for a change of status to permanent resident, however my application was rejected sometime this year. But I've also been a student for over one year in a university in Texas and based on this I applied for another change of status to F-1. My question is will I be denied the application for possibly been out of status since my initial change of status application was denied?

A - It sounds pretty likely that your F-1 will be denied. First, you would have had to have continued to remain in valid B-2 status in order to qualify for a change of status. Second, the fact that you applied for a green card will be a major negative in terms of showing you had intentions to return to your home country. Third, changing from a B-2 to an F-1 visa in the US is normally extremely difficult even in the best of circumstances.

4. Border News

This year, nearly 120 migrants to the United States have died while crossing into the U.S. illegally through Arizona. Fifty-three of the migrants died in July. Last year, 145 migrants died in Arizona, and it is expected that this year's death toll will surpass last year's.

Many argue that the combination of U.S. immigration policy and security crackdowns in the region have forced migrants into more remote and dangerous areas of the border, resulting in their deaths.

Last month, the U.S. announced several measures in an attempt to reduce migration across Arizona. These measures include: (1) placing beacons in the desert, (2) increasing the number of medically trained patrol agents, (3) increasing the number of helicopters involved in search missions, (4) more public service message warnings, and (5) the deployment of agents to desert camps in search of migrants before their deaths.

The Border Patrol states that they saved 421 immigrants this year and 582 last year.

Two federal immigration agents escorted Jaime Ramirez Raudales back to his home in Honduras to make sure that he did not escape a deportation order. An immigration judge ordered Ramirez Raudales' deportation upon learning of the immigrant's involvement in the murders of two human-rights activists 15 years ago in Honduras.

Seven Cubans were recently given the chance to be resettled in a third country after being intercepted by the Coast Guard last week. The twelve other Cubans were taken back to Cuba on Monday.

The seven Cubans proved that they had a credible fear of government persecution if they were forced to return to Cuba based on their anti-government activities and ties to the 24th of February Movement, an island dissident organization. They are being held at Guantanamo Bay until they may be sent to a country other than Cuba or the United States.

This year, the U.S. Coast Guard has intercepted and returned at least 1,002 Cubans at sea. That number has already surpassed last year's number of 931.

In a related story, the 53 Cuban migrants landed on the Florida Keys last week were allowed to remain in the United States.

United States policy generally allows Cubans who land on American land to be admitted into the United States. Those Cubans who are intercepted at sea are returned to Cuba.

In Adams Morgan, a Hispanic neighborhood in Washington, D.C., Hispanic vendors have been selling false U.S. documents, such as driver's licenses, residency cards and social security cards, known as micas in Spanish slang. A 1986 law required all employers to verify that their workers were legal. This served as the impetus for the counterfeit document trade in D.C. Immigration authorities have responded with Operation Card Shark in order to disrupt the counterfeit document market that operates on Columbia Road.

The counterfeit rings that produce and provide the documents are highly compartmentalized. "Runners" seek out potential clients and lead them to the operators, who collect their information and photo. Document makers, aided by computer technology, make the cards. Because of this compartmentalization, when authorities arrest one member of the ring, he or she does not know the other members involved. Another problem for authorities is that ring members often receive light punishments, so they are willing to risk involvement in the crime.

However, recent measures taken against the counterfeit rings have decreased the market for fake documents. In addition to law enforcement officers disrupting the counterfeit rings, measures to give temporary work permits to many South American immigrants have reduced the number of clients looking for fake IDs.

As part of Operation Card Shark, on August 7, special agents from the Bureau of Immigration and Customs Enforcement (ICE) arrested three men in connection with a large-scale counterfeit document ring: Gerardo Marquez-Cortez, Daniel Vazquez-Jimenez and Arturo Carmona-Zamorano. ICE agents also found 592 fake identity documents, which included green cards, Social Security cards, employment authorization cards, Mexican ID cards and driver's licenses from two states. Operation Card Shark has resulted in the arrest of fifty document vendors, criminal prosecution of sixteen individuals and the dismantling of four counterfeit document manufacturing sites to date.

5. News From The Courts

Tuan Thai v. John Ashcroft

The petitioner, a native of Vietnam, was charged and convicted of assault in the third degree-domestic violence, taking a motor vehicle without permission, and third degree rape before the INS issued removal proceedings. The Immigration Judge found that the petitioner was removable as charged by the INS.

The petitioner left Vietnam with neither a passport nor an official exit visa from the Vietnamese government. The INS has yet to receive travel documents for the petitioner, and therefore, the petitioner has been in INS custody since the IJ's ruling. In February, the petitioner's custody review was conducted and the INS District Director ordered that the petitioner's detention would be continued since the petitioner could not show that he would not be a danger to the community. If released, the petitioner is subject to 36-48 months of community supervision as part of his prior sentences.

The District Director then transferred the petitioner's case to the INS Headquarters Post-Order Detention Unit for further review. The district court of Washington heard the case and held that under *Zadvydas*, "once removal is no longer reasonably foreseeable...continued detention of an alien is no longer authorized by statute. In that case, the alien must be released, but the release 'may and should' be conditioned as appropriate in the alien's particular circumstances." In this case, the district court held that the petitioner's history of violent crimes do not justify the court's authorization of indefinite detention because the Supreme Court "has guaranteed certain constitutional protections to the petitioner, including the right to remain free from detention once removal from the United States is not reasonably foreseeable."

Former Employees of Motorola Ceramic Products v. United States

In this case, former workers of Motorola Ceramic Products sought worker adjustment assistance under the Trade Act of 1974. They moved to recover attorney's fees and expenses under the Equal Access to Justice Act (EAJA). The United States Court of International Trade denied the worker's motion for attorney's fees, and the workers appealed.

The Court Of Appeals held that for the purpose of recovering attorney's fees and expenses under the EAJA, workers are considered "prevailing parties" and therefore may recover costs.

6. Government Processing Times

To view the latest processing times, please use the links below:

California – <http://www.visalaw.com/california.html>

Missouri – <http://www.visalaw.com/missouri.html>

Texas – <http://www.visalaw.com/texas.html>

Administrative Appeals Office – <http://www.visalaw.com/aao.html>

7. News Bytes

According to a Pentagon report, two Chinese students studying in the U.S. supplied the Chinese military with American defense technology that allowed Beijing to produce a special metal used in sensors and weapons. The metal, known as Terfenol-D, cost the U.S. Navy millions of dollars to create. The Navy uses Terfenol-D in an advanced sonar system designed to track enemy submarines. Officials say the Chinese could use the substance in a multiple warhead missile stage and in "smart" aircraft wings.

One of the two students attended Pennsylvania State University. The other attended Iowa State University, where he worked closely with the Department of Energy's Ames Laboratory on the school's campus. The lab developed the substance created by the Navy in the 1970s. Terfenol-D data was stolen in the past three years through computer hacking.

Gansu Tianxing Rare Earth Functional Materials Co., Ltd. (TXRE), a Chinese company directly connected to the Chinese military, was set up by a Chinese official who studied with one of the two Chinese students. One of the two Chinese students admitted sending information on Terfenol-D to the Chinese military, according to a report by the Pentagon.

The Pentagon report also said that China is using students and scientists to develop its military technologies. The Chinese government uses people who study advanced technology in the U.S. to infiltrate U.S. companies to gain access to sensitive information. These students and scientists then return to China and either set up their own companies or pass on the information to the military.

On July 3, 2002, President Bush passed the "Executive Order to Expedite Naturalization of Aliens and Noncitizen Nationals Serving in Active Duty Status During the War on Terrorism." As a result, on August 8, over 200 U.S. Navy sailors, many who served in "Operation Iraqi Freedom", were sworn in as U.S. citizens aboard the carrier USS Theodore Roosevelt.

In 2000, Yun Kyeong Sung accused Celine Dion's husband, Rene Angelil, of fondling her as a Las Vegas resort, but did not inform the police. Angelil paid Sung \$2 million in a confidential settlement. In 2002, after Las Vegas authorities threatened to charge Sung with fraud for not paying off markers from a Las Vegas casino, Sung claimed that Angelil had raped her. Sung and her husband, Ae Hoe Kwon, sought \$20 million from Angelil, which prompted Las Vegas police to lodge extortion charges against them. Sung and her husband have lost their attorneys, because Sung lost her money in casinos and cannot afford lawyer fees. Sung faces charges that she failed to pay about \$950,000 in markers issued by Las Vegas casinos. She is also charged with trying to extort Angelil with allegations that he sexually assaulted her. Sung is also about to face deportation proceedings because she does not have the correct paperwork to be in the U.S.

An immigration judge in Boston was placed on administrative leave on August 4 after complaints about his conduct in the courtroom. In June, a Ugandan woman named Jane who was seeking political asylum went before Judge Thomas Ragno to testify that government soldiers killed her husband and raped her. According to Jane's doctor, Ragno said: "Jane, come here. Me Tarzan!" Ragno also dialed the weather number on his speakerphone in order to listen to the forecast and talked in open court about looking for a condominium, according to the doctor.

Walther Velasquez, an Ex-Social Security worker in Florida, was sentenced to twenty-seven months in federal prison for issuing fake Social Security cards to undocumented immigrants. According to court records, Velasquez made at least a dozen fake Social Security cards. Documents also associate him to a counterfeiting ring stretching from Boston to Texas that produced 1700 fake Social Security cards.

Authorities estimate that the ring made \$4.3 million after charging \$2500 for each card.

Schools Superintendent Wilfredo T. Laboy has failed the Massachusetts Tests for Educator Licensure three times. By law, Laboy must pass the tests in order to be certified as a Massachusetts educator. Laboy blames his failing scores on the fact that English is his second language.

According to a lawsuit filed against the City of Los Angeles, some 400,000 people of Mexican descent were deported to Mexico during the Great Depression. From 1929 to 1933, these people were forced to leave the U.S. in order to save jobs for "whites". According to the Los Angeles Times, some 60 percent of those sent back to Mexico were U.S. citizens.

The Arkansas Office of Emergency Management Director, W.R. "Bud" Harper, was forced to resign after sending a racially charged e-mail to his employees. The e-mail, titled "Illegal Poem" described poor immigrants becoming rich on the U.S. welfare system. Harper, a former judge, stated that the poem does not reflect his own opinions about immigrants. His intentions were just to forward a humorous e-mail.

As of August 19, 2003, the National Passport Information Center (NPIC) will change its telephone number from a 1-900 fee-for-service to toll free service. The new telephone number will be 1-877-4USA-PPT (or 1-877-487-2778). For TDD/TTY users, the number will be 1-888-874-7793. In addition, live operator service will be expanded so that operators will be available on weekdays from 8:00 a.m. to 8:00 p.m. Eastern Standard Time. Automated service will still be available twenty-four hours a day, seven days a week. Callers who use the 1-900 number will be directed to the new number at no charge. NPIC is also adding e-mail access to the NPIC at npic@state.gov. E-mail inquiries will be answered within twenty-four hours during normal business days. NPIC is currently working on adding inquiry-by-fax service.

In January 2003, the Transportation Security Administration (TSA) proposed to establish a new system of records known as "Passenger and Aviation Security Screening Records" in order to support the development of a new version of the Computer Assisted Passenger Prescreening System, or CAPPs II. TSA intends to use the CAPPs II system to conduct risk assessments to ensure passenger and aviation security for passengers traveling to, from and within the U.S.

Under the proposed system, TSA will obtain electronically passengers' Passenger Name Records (PNRs). A PNR may include each passenger's full name, home address, home telephone number, date of birth and information about the passenger's itinerary. The system will access this information prior to flight. The

obtained information will be used to authenticate passenger identity only. Once CAPPS II has authenticated a passenger's identity, it will conduct risk assessment in order to determine whether a passenger is a known terrorist or has identifiable links to known terrorists or terrorist organizations. Information regarding persons with outstanding state or Federal arrest warrants for crimes of violence may also be analyzed.

Based upon the collected information, passengers will be identified with a "risk score," indicating whether that passenger's information leads to a determination of low, high or unknown risk to other passengers and aviation safety. Most passengers will be identified as "low risk," and will proceed as normal through airport security screening. Those passengers identified as "high risk" or "uncertain risk" will be subject to heightened security screening procedures.

The California Consortium for Agricultural Export (CCAIE), a BCIS-designated Regional Center for the Immigrant Investor Pilot Program, has announced that BCIS has approved the I-526 Petition for Alien Entrepreneur for CCAIE's first immigrant investor applicant. The applicant will begin an almond-growing business in the San Joaquin Valley.

8. International Roundup

A new intelligence report says it "seems logical" that migrants from regions where suicide bombings occur might import the deadly tactic to Canada. Canada, a culturally diverse nation, has sizeable populations from regions where suicide bombings are used by extremist elements, such as Lebanon, Sri Lanka, India, Pakistan, and Algeria. These countries are also among the leading immigrant sources to Canada. Therefore, the report determines that it is quite logical that these groups would bring their conflicts and tactics to Canada.

In the United Kingdom, a Pakistani refugee's health is deteriorating quickly while she and her son are awaiting deportation in a Laval detention center, advocates of her case warned this week. Supporters of Fatima, 63, rallied to demand that the federal government release her and her son, Imran 17, from the Immigration Detention Center, where she's been since June 25.

The whole legal basis under which 13 "suspected international terrorists" are being held indefinitely in Britain without trial is to be reconsidered by the House of Lords in the United Kingdom. The three senior judges gave no reason for their ruling, which was published last week. There are 13 foreign nationals without charge in British prisons under the home secretary, David Blunkett's, Anti-terrorism, Crime and Security Act, which was brought into force two months after the September 11 attacks.

Migrants should be diverted to ease housing, environmental and other pressures on the city, according to a national poll in Australia. The poll found out that almost 60% of Australians were in favor of an immigration program that directed new entrants towards less populous centers such as Darwin or Tasmania. Flaws have been recently identified in the city's power and water supply system. Immigration has also been raised as a factor contributing to Sydney's soaring house prices, which the federal government denies. The premier Bob Carr has been lobbying for a cut in migrant numbers, arguing that Sydney cannot cope with the 1000 new entrants currently arriving each week.

Both Sri Lanka and Pakistan will sign a Memorandum of Understanding (MOU) on security co-operation, especially in the sphere of human smuggling, said Pakistan's Minister of Interior and Narcotics. He disclosed this when he met his Sri Lankan counterpart John Amaratunga at the Interior Ministry. The Pakistani Government is firmly committed to support Sri Lanka in global efforts to combat terrorism and human smuggling. This came when Police in Matugama nabbed 14 Pakistanis and seven Indians who were waiting to travel illegally to Italy last week.

9. Legislative Update

The following bills were recently introduced in Congress:

[HR 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.

[HR 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.

[HR 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.

[S. 1481](#), a bill to prohibit the application of the trade authorities procedures with respect to implementing bills that contain provisions regarding the entry of aliens. Sponsor: Sen Leahy, Patrick J. [VT] (introduced 7/29/2003) Latest Major Action: 7/29/2003 Referred to Senate committee. Status: Read twice and referred to the Committee on Finance.

[S. 1545](#), a bill to amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to permit States to determine State residency for higher education purposes and to authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents. Sponsor: Sen Hatch, Orrin G. [UT] (introduced 7/31/2003). Latest Major Action: 7/31/2003 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. BCIS Director Addresses Application Backlog

Upon creation, some of the immediate goals of BCIS were to improve immigration customer services, continue to eliminate backlogs of immigration adjudications, and promote national security. Today, the BCIS claims it continues to transform and improve immigration and citizenship services.

BCIS Director Eduardo Aguirre has now announced that he is taking steps to reduce the long-standing backlog of immigration applications. The use of new technology will increase the efficiency of the BCIS, as well as reduce wait times and application backlogs. Aguirre acknowledged that BCIS' technology is behind and a lot of work is done manually. BCIS is now researching information technology systems in order to improve its efficiency.

Backward technology is not the only cause of backlog. Heightened security has also affected backlog so that an U.S. citizenship applicant must wait a year or more for a response. Applicants in certain parts of the U.S. must wait over two years. Adjudicators scrutinize applications more closely and the Department of Homeland Security has denied 11 percent more visa and green card applications than the INS did one year ago.

BCIS continues to rely on former INS managers, now stationed in ICE, for administrative support. This has led to concern among agency employees that BCIS may not receive first priority for congressionally appropriated funding, and therefore be unable to make technological investments that will reduce backlog.

Aguirre has already made improvements in BCIS' efficiency. In May, Aguirre introduced E-filing for forms I-765 (Application for Employment Authorization) and I-90 (Application for Replacement of Green Card), which allow the BCIS to produce a

high quality immigration document with special security features. These two forms make up about thirty percent of benefit applications filed at BCIS each year. He has also reduced lines at BCIS offices by allowing immigrants to schedule appointments with immigration adjudicators online. Aguirre plans to meet President Bush's goal to reduce wait times on immigrant applications to no more than six months by 2006.

11. Temporary Protected Status For Nationals Of Liberia

BCIS announced on August 6 that it was extending Temporary Protected Status (TPS) for Liberian nationals effective from October 1, 2003 to October 1, 2004. Nationals of Liberia who have already been granted TPS must reregister for the one-year extension during the sixty-day re-registration period, which began on August 6 and ends October 6, 2003. Only Liberians who have continuously resided and have been continuously present in the U.S. since October 1, 2002 qualify for re-registration. Approximately 2,700 of Liberian nationals in the U.S. qualify for re-registration.

Section 244 of the Immigration and Nationality Act (INA) allows the Secretary of Homeland Security to grant TPS to aliens of the U.S. who are nationals of countries that are subject to ongoing armed conflict, environmental disaster or extraordinary and temporary conditions. Due to the armed conflict in Liberia, TPS status was designated for Liberian nationals on October 1, 2002. The Secretary of Homeland Security has extended this TPS designation, as requiring the return of Liberian nationals would be a serious threat to their physical safety. When the Secretary terminates Liberia's designation, the aliens will return to the status they had before receiving TPS.

To re-register for extension, TPS applicants must submit Form I-821 (Application for TPS), Form I-765 (Application for Employment Authorization) and two identification photographs to the local BCIS district office. Applicants who are seeking to reregister for TPS only, and not seeking an extension of employment authorization, must still submit Form I-765, but do not have to pay the application fee. All applicants seeking an extension of employment authorization until September 17, 2004 must pay the \$120 filing fee.

More information on the extension of TPS for Liberia is provided at:
http://www.bcis.gov/graphics/publicaffairs/questsans/Liberia_TPSga_080703.htm.

More information on general TPS is available at:
http://www.bcis.gov/graphics/services/tps_inter.htm.

12. State Department Visa Bulletin – September 2003

A. STATUTORY NUMBERS

1. This bulletin summarizes the availability of immigrant numbers during September. Consular officers are required to report to the Department of State documentarily qualified applicants for numerically limited visas; the Bureau of Citizenship and Immigration Services in the Department of Homeland Security reports applicants for

adjustment of status. Allocations were made, to the extent possible under the numerical limitations, for the demand received by August **7th** in the chronological order of the reported priority dates. If the demand could not be satisfied within the statutory or regulatory limits, the category or foreign state in which demand was excessive was deemed oversubscribed. The cut-off date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits. Only applicants who have a priority date **earlier than** the cut-off date may be allotted a number. Immediately that it becomes necessary during the monthly allocation process to retrogress a cut-off date, supplemental requests for numbers will be honored only if the priority date falls within the new cut-off date.

2. The fiscal year 2003 limit for family-sponsored preference immigrants determined in accordance with Section 201 of the Immigration and Nationality Act (INA) is 226,000. The fiscal year 2003 limit for employment-based preference immigrants calculated under INA 201 is 171,532. Section 202 prescribes that the per-country limit for preference immigrants is set at 7% of the total annual family-sponsored and employment-based preference limits, i.e., 27,827 for FY-2003. The dependent area limit is set at 2%, or 7,951.

3. Section 203 of the INA prescribes preference classes for allotment of immigrant visas as follows:

FAMILY-SPONSORED PREFERENCES

First: Unmarried Sons and Daughters of Citizens: 23,400 plus any numbers not required for fourth preference.

Second: Spouses and Children, and Unmarried Sons and Daughters of Permanent Residents: 114,200, plus the number (if any) by which the worldwide family preference level exceeds 226,000, and any unused first preference numbers:

A. Spouses and Children: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;

B. Unmarried Sons and Daughters (21 years of age or older): 23% of the overall second preference limitation.

Third: Married Sons and Daughters of Citizens: 23,400, plus any numbers not required by first and second preferences.

Fourth: Brothers and Sisters of Adult Citizens: 65,000, plus any numbers not required by first three preferences.

EMPLOYMENT-BASED PREFERENCES

First: Priority Workers: 28.6% of the worldwide employment-based preference level, plus any numbers not required for fourth and fifth preferences.

Second: Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability: 28.6% of the worldwide employment-based preference level, plus any numbers not required by first preference.

Third: Skilled Workers, Professionals, and Other Workers: 28.6% of the worldwide level, plus any numbers not required by first and second preferences, not more than 10,000 of which to "Other Workers."

Fourth: Certain Special Immigrants: 7.1% of the worldwide level.

Fifth: Employment Creation: 7.1% of the worldwide level, not less than 3,000 of which reserved for investors in a targeted rural or high-unemployment area, and 3,000 set aside for investors in regional centers by Sec. 610 of P.L. 102-395.

4. INA Section 203(e) provides that family-sponsored and employment-based preference visas be issued to eligible immigrants in the order in which a petition in behalf of each has been filed. Section 203(d) provides that spouses and children of preference immigrants are entitled to the same status, and the same order of consideration, if accompanying or following to join the principal. The visa prorating provisions of Section 202(e) apply to allocations for a foreign state or dependent area when visa demand exceeds the per-country limit. These provisions apply at present to the following oversubscribed chargeability areas: MEXICO, INDIA and PHILIPPINES.

5. On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are available for all qualified applicants; and "U" means unavailable, i.e., no numbers are available. (NOTE: Numbers are available only for applicants whose priority date is **earlier** than the cut-off date listed below.)

Priority Dates for Family Based Immigrant Visas				
	All Chargeability Areas Except Those Listed	INDIA	MEXICO	PHILIPPINES
Family				
1st	08APR00	08APR00	22SEP94	15APR89
2A*	15AUG98	15AUG98	01FEB96	15AUG98
2B	15MAR95	15MAR95	26NOV91	15MAR95
3rd	08JUN97	08JUN97	01SEP94	15SEP88
4th	01NOV91	01JAN90	01NOV91	08JUL81

*NOTE: For August, 2A numbers **EXEMPT from per-country limit** are available to applicants from all countries with priority dates **earlier** than 15JAN96. 2A numbers **SUBJECT to per-country limit** are available to applicants chargeable to all countries **EXCEPT MEXICO** with priority dates beginning 15JAN96 and earlier than 01FEB96. (All 2A numbers provided for MEXICO are exempt from the per-country limit; there are no 2A numbers for MEXICO subject to per-country limit.)

Priority Dates for Employment-Based Immigrant Visas				
	All Chargeability Areas Except Those Listed	INDIA	MEXICO	PHILIPPINES
Employment-Based				
1st	C	C	C	C
2nd	C	C	C	C
3rd	C	C	C	C
Other Workers	C	C	C	C
4th	C	C	C	C
Certain Religious Workers	C	C	C	C
5th	C	C	C	C
Targeted Employment Areas/Regional Centers	C	C	C	C

The Department of State has available a recorded message with visa availability information which can be heard at: (202) 663-1541. This recording will be updated in the middle of each month with information on cut-off dates for the following month.

B. DIVERSITY IMMIGRANT (DV) CATEGORY

Section 203(c) of the Immigration and Nationality Act provides a maximum of up to 55,000 immigrant visas each fiscal year to permit immigration opportunities for persons from countries other than the principal sources of current immigration to the United States. The Nicaraguan and Central American Relief Act (NCARA) passed by Congress in November 1997 stipulates that beginning with DV-99, and for as long as necessary, up to 5,000 of the 55,000 annually-allocated diversity visas will be made available for use under the NCARA program. **This reduction has resulted in the DV-2003 annual limit being reduced to 50,000.** DV visas are divided among six geographic regions. No one country can receive more than seven percent of the available diversity visas in any one year.

For **September**, immigrant numbers in the DV category are available to qualified DV-2003 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers **BELOW** the specified allocation cut-off number:

All DV Chargeability Areas Except Those Listed Separately

Region

AFRICA: AF 49,350 Except: Ethiopia AF 43,500

ASIA: AS 21,400

EUROPE: EU 39,100

NORTH AMERICA (BAHAMAS): NA Current

OCEANIA: OC Current

SOUTH AMERICA, and the CARIBBEAN: SA Current

Entitlement to immigrant status in the DV category lasts only through the end of the fiscal (visa) year for which the applicant is selected in the lottery. The year of entitlement for all applicants registered for the DV-2003 program ends as of September 30, 2003. DV visas may not be issued to DV-2003 applicants after that date. Similarly, spouses and children accompanying or following to join DV-2003 principals are only entitled to derivative DV status until September 30, 2003. DV visa availability through the very end of FY-2003 cannot be taken for granted. Numbers could be exhausted prior to September 30. **Once all numbers provided by law for the DV-2003 program have been used, no further issuances will be possible.**

C. ADVANCE NOTIFICATION OF THE DIVERSITY (DV) IMMIGRANT CATEGORY RANK CUT-OFFS WHICH WILL APPLY IN JUNE

For **October**, immigrant numbers in the DV category are available to qualified DV-2003 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers **BELOW** the specified allocation cut-off number:

All DV Chargeability Areas Except Those Listed Separately

Region

AFRICA: AF 9,300 except: Ethiopia AF 6,000

ASIA: AS 5,000

EUROPE: EU 8,000

NORTH AMERICA (BAHAMAS): 2

OCEANIA: OC 100

SOUTH AMERICA, and the CARIBBEAN: SA 300

D. POTENTIAL RETROGRESSION OF THE INDIA FAMILY FOURTH PREFERENCE CUT-OFF DATE

Continued heavy applicant demand for numbers has required the retrogression of the India Family Fourth preference cut-off date for September. This action was necessary to hold issuances within the annual numerical limit. The India Family Fourth preference cut-off date can be expected to advance for October, which is the start of the new fiscal year.

E. SPECIAL IMMIGRANT CATEGORY FOR CERTAIN RELIGIOUS WORKERS

The provisions in Section 101(a)(27)(C)(ii)(II) and (III) of the Immigration and Nationality Act for visa issuance to Certain Religious Workers (SR) expire as of September 30, 2003. Applicants who qualify for SR status must either adjust status or immigrate on or before September 30, 2003. This includes any accompanying spouses and children of such religious workers. On or after October 1, 2003, qualifying religious workers cannot immigrate under the current provision. (The special immigrant classification for Ministers of Religion is permanent, however, and will not be affected by the expiration of the provisions for other religious workers.)

Congress is considering an extension of the "SR" visa category is possible, but there is no certainty when legislative action may occur. If this proposed legislation becomes law, readers will be notified in an upcoming Visa Bulletin.