

Siskind's Immigration Bulletin
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Siskind Susser serves immigration clients throughout the world from its offices in the
US, Canada and the People's Republic of China. To schedule a telephone or in-person
consultation with the firm, go to <http://www.visalaw.com/intake.html>. Editor: Greg
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1. Openers
2. The ABC's Of Immigration – Immigration Terminology, Part II
3. Ask Visalaw.com
4. Border News
5. News From The Courts
6. Government Processing Times
7. News Bytes
8. International Roundup
9. Legislative Update
10. Human-Rights Activist Arthur C. Helton Killed In Baghdad Bombing
11. Diversity Visa Lottery To Accept Electronic Applications Only
12. Canadian Corner
13. Department Of State Adopts Final Rule On Automatic Visa Revalidation

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1. Openers

Dear Readers:

This is a sad week for the country's immigration lawyers. We lost one of our own in
the savage bombing of the UN headquarters in Baghdad a few days ago. Arthur
Helton was a renown immigration lawyer and humanitarian who truly devoted his life

to his fellow man. He was in Baghdad meeting with UN officials regarding various issues of humanitarian concern surrounding the changes in that country of late.

I had the honor of knowing Arthur, though I wish I had gotten the chance to spend more time with him. He and I served at the same time as members of the American Bar Association's Coordinating Committee on Immigration Law. I represented the Young Lawyers Division on the ABA on that committee and Arthur represented the International Section. Arthur was asked to serve on that committee because of his tremendous experience in the field and the respect he deservedly received from all who knew him. I remember serving on that committee and sitting in awe of Arthur and some of the other legends of the immigration bar who also served the ABA in this capacity.

Over the last few days, accolades for Arthur's contributions have been coming from many immigration lawyers who knew him better. But for those of you who never met Arthur, we hope you will read our article this week on Arthur's career and take a moment to remember him.

In firm news, I remind readers that I will be moderating a series of immigration telephone seminars conducted by ILW.com. The series is entitled "Immigration for the Spirit, Body and Soul: Entertainers/Artists/Athletes, Chefs/Cooks/Hospitality Workers, and Religious Workers." The first program will take place on August 27th and will cover sports and entertainment immigration. You can sign up for the program by going to www.ilw.com/lawyers/seminars/august2003.shtm.

I was also quoted this week in an article in the Washington Times on Social Security Administration mismatch letters. You can find the article linked at www.visalaw.com/news/washtimesaug242003.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 – Immigration Terms, Part II

This is the second in a series of articles on immigration terminology. This article will cover terms and ideas that expand upon the basic vocabulary of an immigration attorney.

Alien Labor Certification – Certification by the U.S. Department of Labor that there is an insufficient number of U.S. workers who are able, willing, qualified, and immediately available at the place of proposed employment. The certification also provides that employment of the alien seeking certification will not adversely affect the wages and working conditions of U.S. workers similarly employed.

Alien Registration Receipt Card – The official name used in immigration law for a green card.

Attestation – Sworn statements that employers must make to the U.S. Department of Labor before being able to bring foreign workers to the United States. These statements may be that the employer is trying to hire more Americans, or simply be that foreign workers will be paid the same as U.S. workers.

Diversity Visa (the "green card lottery") – Generic name given to the immigrant visa lottery program established by the Immigration Act of 1990 that makes available up to 50,000 immigrant visas per federal fiscal year to persons from low-admission states and low-admission regions. The Diversity USA (DV) program is administered by the U.S. Department of State, which established the rules for the lottery and tracks the available visa numbers.

I-94 card – A card given to all nonimmigrants when they enter the U.S. to serve as evidence that a nonimmigrant has entered the country legally. Before the I-94 card is handed out, it is stamped with a date indicating how long the nonimmigrant may stay for that trip. It is this date, not the expiration date of the visa, that controls how long a nonimmigrant can remain in the U.S. Each time a nonimmigrant legally enters the U.S., he or she receives a new I-94 card with a new date.

Inadmissible – Potential immigrants who are disqualified from obtaining visas or green cards because they are judged by the U.S. government to be in some way undesirable are called inadmissible (formerly "excludable"). Most of these individuals are inadmissible because they have criminal records, certain health problems, commit certain criminal acts, are thought to be subversive, or are unable to support themselves financially.

Parole – Under certain circumstances, a person may be allowed to enter the U.S. for humanitarian purposes, even when he or she does not meet the technical visa requirements. Those who are allowed to come to the U.S. without a visa in this manner are granted parole, and are known as parolees. Advance Parole may be granted to a person who is already in the U.S. but needs to leave temporarily, and return without a visa. This is the most common when someone has a green card application in process and must leave the U.S. for an emergency or on business.

Permanent Resident – A permanent resident is a non-U.S. citizen who has been given permission to live permanently in the U.S. If you acquire permanent residence, you will be issued a green card; therefore, the terms permanent resident and green card holder are synonymous. As a permanent resident, you may travel as much as you like, but your place of residence must be in the U.S. and you must keep that resident on a permanent basis.

Priority Date – The date on which you first entered the immigration application process is called the Priority Date. Since only a limited number of green cards are issued each year, you must wait your turn behind the others who have filed ahead of you. Your Priority Date marks your place in the waiting line. Each month the U.S. Department of State makes green cards available to all those who applied on or before a certain priority date. You can get a green card only when your date comes up on the DOS list.

Quota – Certain categories of qualified green card applicants are allowed into the U.S. in unlimited numbers. Certain other categories are restricted by a quota. Approximately 400,000 green cards can be issued each year under the quota, with no more than 25,000 going to applicants from any one country. If there are more green card applicants than there are green cards allocated under the quota each year, a backlog is created and applicants must wait their turns. It is because of the quota that it can often take years to get a green card.

Removal Proceedings – Removal (formerly “deportation”) Proceedings are carried on before a special immigration judge to decide whether or not an immigrant will be allowed to enter or remain in the country. While a person typically cannot be expelled without first going through a removal hearing, someone arriving at the border or a port of entry can be forced to leave without a hearing or ever seeing a judge.

Temporary Protected Status (TPS) – A temporary protected status is for persons already in the U.S. who came from certain countries experiencing conditions of war or natural disasters. TPS allows someone to live and work in the U.S. for a period of not less than six months or no more than 18 months, but it does not lead to a green card. TPS is presently available to persons from Burundi, Nicaragua, El Salvador, Sierra Leone, Honduras, Somalia, Liberia, Sudan, and Montserrat.

Visa Waiver Program - The Visa Waiver Program (VWP) allows foreign nationals from certain countries to be admitted to the U.S. under limited conditions and for a limited time without obtaining a visa. The VWP permits nationals from designated countries to apply for admission to the United States for ninety (90) days or less as nonimmigrant visitors for business or pleasure without first obtaining a nonimmigrant visa. The following countries are presently participants in this program: Andorra, Austria, Australia, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, and The United Kingdom.

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 filed my I-360 application and received a notice from BCIS on May 9, 2003. Since it takes about 90-240 days to process this type of application, my question is can I file for an I-485 application while my I-360 is still pending? I would appreciate your help in clarifying this issue for me.

A - Unfortunately, there is no concurrent filing for I-360 immigrant visa applications. You can only file adjustment applications with employment-based green card applications in the case of I-140 employment-based green card applications.

Q - I am working in the U.S. with a H1-B1 for a little over 1 year and my wife is H-4. We have a son over 2 years old who was born in VA and now an American citizen. Using this family connection, can we apply for Green Card (LPR)?

A - There is a fairly common myth that anti-immigration zealots typically enunciate that people come to the US to have babies as an avenue to getting the parents legal status in the US. This is not the case. Children born in the US are US citizens. However, they cannot sponsor their parents for green cards until they turn 21 years old. The children are entitled to stay in the US, but their parents are not, and if the parents want the child to stay, they have to make arrangements for someone else to raise the child. Obviously, that rarely happens.

Q - I have a friend who is in the US for about 3 years and married a US citizen, but wants to divorce now, and his spouse is his sponsor. What does he have to do in order to divorce her and what if any complications are there in something like this? I would greatly appreciate any kind of help you could give me.

A - The answer depends on where your friend is in the process. If the adjustment application is still pending, your friend's situation is not going to be good. The couple still needs to be living together in good faith at the time of the granting of the initial green card. If the green card has been approved, but your friend has conditional permanent residency (you'll know this if the green card has a two year expiration date), then it is possible the situation can be handled successfully if your friend requests a waiver of the I-751 joint filing requirement (that's the requirement that the sponsoring spouse jointly file the application with the green card holder). Your friend really should consult with a lawyer.

Q - Please I wish to know the latest date for the submission of documents for the 2004 successful applicants.

A - DV-2004 winners must complete processing by September 30, 2004. If you are processing at a consulate, you can send the documents in now and should assume that the process will take six or more months. If you are processing in the US, your local INS/BCIS will not take the application until October 1, 2003. You need to be very proactive to make sure your case is moving along properly since the processing agencies (particular the INS/BCIS have a notoriously bad history when it comes to getting these cases processed in a timely manner).

Q - My husband is a green card holder and is living in Florida. In April this year he has applied for my immigration. On this basis I may get the immigration visa within 3 years. In May 2004 he is expected to get US nationality. As it is a long period of wait, so my husband after becoming US national intends to apply to the immigration authorities to shift my case from the green card holders file to the US nationals file. In this way he thinks that the visa will maybe issued within 6 months. Do you think

the US immigration allows the shifting of the case from the green card holders file to the US nationals file?

A - Actually, your husband does not need to do anything for you to qualify in the US spouse category once he naturalizes. You will "automatically convert" to the new category. If you are outside the US, you or your attorney will want to notify the INS/BCIS of your new status if they have not yet approved your I-130 petition. If you are outside the US and your I-130 has been approved, you or your attorney will want to notify the US State Department of your changed status so that they can get the process started to get your green card at a consulate.

4. Border News

The Department Of Homeland Security has yet to combine a dozen separate potential terrorist "watch lists," according to Deputy Secretary Gordon England, who said during a news conference hosted by the Heritage Foundation that the task is a "technical challenge." England said the separate databases and computers were not designed to share information. Another complicating factor is duplicate data included on some of the lists, with some names listed multiple times with different spellings, birthdates or hometowns. Despite the slow progress, England said the department had achieved several accomplishments, including the establishment of a counter-terrorism intelligence-analysis office, implementation of biometric technology used to track immigrants, and the use of new inspection systems to scan material entering the country.

According to an article published by the Plain Dealer in Cleveland, Ohio, the Bureau of Citizenship and Immigration Services has placed a 10 year bar on the reentry of a Romanian grandmother who admitted to helping babysit her newborn grandson while in the country on a six-month visitor visa. According to a letter from the former Immigration and Naturalization Service, Maria Missits accepted "unauthorized employment" by providing child-care service to her daughter's 10-month-old baby. Missits told immigration officials that she wanted to help her daughter, Ioana, with her son when asked why she wanted to extend her visa for 2 ½ months. In response, the Bureau claimed she was, in effect, "replacing an employable worker." Ioana and her husband, Ho-Fan Lee, have permanent-resident status in the United States. Since Missits departed on March 31, the young couple has not hired anyone to help baby-sit the child.

5. News From The Courts

Joseph Awolesi and Ebenezer Awolesi v. John Ashcroft
U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT

Joseph Awolesi and his son Ebenezer, citizens and natives of Nigeria, petitioned the Third Circuit to review an order by the Board of Immigration Appeals (BIA), which reversed the decision of the immigration judge who granted them asylum. Awolesi and his son were granted asylum because Awolesi feared the Nigerian government

would persecute him for his political beliefs. Awolesi's brother Matthew Awolesi is a member of the Social Democratic Party in Nigeria, and was the target of assassination attempts by the Nigerian security forces and is currently in hiding. Because Awolesi had financially supported his brother's political campaign in Nigeria, he fears that the Nigerian government believes that he is a member of the pro-democracy party and will be persecuted as well.

The BIA's reversal did not explain how it reached its decision, only that there was insufficient evidence. Therefore, the Third Circuit could not "perform a meaningful review" and cancelled the order of deportation and remanded the case for further reconsideration.

Awolesi and his son arrived in the U.S. in February 1993 with visitor's visas, which expired in August 1993. In October 1993, Awolesi applied for asylum and withholding of deportation. In his application, Awolesi claimed the Muslim fundamentalist police would persecute him because of his Christian religion. His application was denied, and he and his son were ordered to appear before an immigration judge for overstaying their visas. When he appeared before the judge, Awolesi testified that he had been threatened by members of the military and feared he would be persecuted because of his political beliefs if he returned to Nigeria. He fled Nigeria in 1993 because he feared the outcome of the upcoming elections. He took his then teenage son, Ebenezer, but left behind his wife and other children, who were not harmed in his absence. Awolesi said that he feared the Nigerian government would kidnap his son as a means of coercion, a valid claim due to the arbitrary arrest and imprisonment of relatives and friends of wanted suspects in Nigeria.

After a full hearing on the merits of the case, the immigration judge granted asylum for Awolesi and Ebenezer. The INS appealed the decision to the BIA, which reversed the judge's ruling.

Citing *Abdulai v. Ashcroft* 239 F.3d 542 (3d Circuit 2001), Awolesi argued that the BIA's four-sentence decision left no room for the Third Circuit to review it. He also claimed that the decision violated his due process rights. The Third Circuit, citing *Abdulai* and also *Sotto v. INS* 748 F.2d 832, 836 (3d. Circuit 1984), ruled that the BIA had not sufficiently explained why it denied Awolesi's petition. The Third Circuit, therefore, could not determine why the immigration judge's ruling was reversed. Awolesi's petition for review was granted.

In Re: Grand Jury Subpoena v. Under Seal

Two FBI agents interviewed the Appellant for the purposes of determining if he had any information regarding terrorism investigations. The FBI also discussed the Appellant's earlier filing of an I-485, or green card application. One of the FBI agents asked the Appellant about one of the I-485 questions, which says "Have you ever, in or outside the United States...been arrested, cited, charged, indicted, fined, or imprisoned for breaking or violating any law or ordinance, excluding traffic violations?" The Appellant answered "no" to this question on the form, and when the FBI agent questioned him about this when considering his previous conviction for shoplifting, the Appellant stated that his counsel had advised him to respond "no".

The Counsel appeared before a federal grand jury that was investigating the Appellant for making a false statement on the form. When asked about whether or not the attorney advised the Appellant to answer "no", the attorney declined to answer, stating that her answers would reveal privileged information. The grand jury proceedings were suspended. The government moved to have Counsel answer the question, while the Appellant moved to quash the subpoena, arguing that the answer would reveal privileged information. The district court granted the Government's motion to compel. The court reasoned that the Appellant waived the privilege with respect to the questions at issue when he made statements to the FBI.

On appeal, the Appellant argues that he did not waive his attorney-client privilege with respect to the information sought by the Government. The Court found that by asking about the preparation of Form I-485, the questions did in fact seek disclosure of the specific nature of the legal advice sought by Appellant. The Court agreed with the district court that the attorney-client privilege would generally protect against disclosure of whether Counsel advised Appellant to answer "no" to a question on his I-485. The Court found that the Government's question asked Counsel to reveal the substance of legal advice that she may have given to Appellant concerning his submission of Form I-485 – a confidential communication that clearly falls within the scope of the privilege. The Court also rejected the Government's argument that because the I-485 was a public document there was no intention for the document or information pertaining to it to remain confidential.

However, the Court affirmed the decision because it found that although the information did fall within the attorney-client privilege, the Appellant did waive that privilege by divulging information to the FBI agents. By naming the attorneys by name and specifying which attorney instructed him to say "no", the Court found that the Appellant waived all privacy and privilege that may have existed in this relationship.

6. Government Processing Times

This week there are new times to report for the following service centers:

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

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

Vermont: <http://www.visalaw.com/vermont.html>

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

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

Source: [American Immigration Lawyers Association](#)

7. News Bytes

As of August 19, the public can obtain passport information by calling a toll-free telephone number operated by the National Passport Information Center. According to a Department of State media note, the NPIC moved from a 1-900 fee-based-service to the free line as the result of a contract between the agency and communications company AT&T. The new general number is 1-877-4USA-PPT, and live operators are available weekdays 8am to 8pm, Eastern Time. Anyone who calls the old 900 number will be forwarded to the toll-free number at no charge. The NPIC has also added e-mail access and can be contacted at npic@state.gov

The Department Of Justice has announced the award of \$675,000 in grants to eleven nonprofit organizations in order to conduct immigration-related job discrimination public educational programs for workers and employers. The grants, ranging from individual awards of \$40,000 to \$85,000, will fund seminars, allow for the distribution of educational materials in various languages and assist victims of immigration-related discrimination. Those groups receiving the grants include: New York City Commission on Human Rights, Asian Pacific American Legal Center of Southern California, International Rescue Committee, Catholic Charities of Dallas, Catholic Charities of Houston, Georgia Hispanic Chamber of Commerce, Illinois Department of Human Rights, Catholic Charities of St. Petersburg, Legal Aid Services of Oregon, Hogar Hispano / Catholic Charities of Arlington, and the National Immigration Law Center.

The Naturalizations chapter of the forthcoming 2002 Yearbook of Immigration Statistics (formerly the Statistical Yearbook of the Immigration and Naturalization Service) was released this week. The Yearbook defines naturalization as the term that "refers to the conferring of U.S. citizenship, by any means, upon a person after birth."

According to the data, the INS naturalized 573,708 persons in fiscal year 2002, a six percent drop from the previous year. The number of applications received increased between the two years, but the chapter cautions that the application backlog and related workflow issues might obscure the trend in application approval percentage.

Mexico was the leading country of birth of persons naturalizing in 2002, followed by Vietnam, India, China, the Philippines, Korea, the Dominican Republic, Jamaica, Poland and Ukraine. Together, the top ten countries represented 49 percent of new citizens in 2002.

The top destinations were California, at 26% of persons naturalizing in 2002, followed by New York with 16%. Other top states of residence included Florida, Texas, Illinois, and New Jersey.

The Bureau of Citizenship and Immigration Services' Office of Business Liaison released several employer information bulletins this week, including:

- A bulletin on Aliens with Extraordinary Ability (O-1) and the Accompanying/Assisting Aliens (O-2) including standards for O-1 and O-2

classification, which can be found online at:

<http://www.immigration.gov/graphics/services/employerinfo/EIB15.pdf>

- A bulletin on employment under NAFTA including general information, TN admissions procedure, and schedule 2 professions, online at:
<http://www.immigration.gov/graphics/services/employerinfo/EIB11.pdf>
- A bulletin on temporary religious workers, including eligibility, standards, and procedural requirements, online at:
<http://www.immigration.gov/graphics/services/employerinfo/EIB18.pdf>

8. International Roundup

Canada's Immigration and Refugee Board has denied a Venezuelan woman's claim for refugee status because she is overweight, saying her size does not qualify her for special status under the Board's Gender-Related Persecution guidelines.

Immigration officials in Finland say the number of illegal entrants have doubled in the first half of this year compared to number of those who tried to enter the country without valid documents during the same period last year. The majority caught attempting to cross the border illegally came from the former Yugoslavia, followed by Iraq, Turkey, Bulgaria and Somalia. At the same time, the number of applicants seeking political asylum in Finland is slightly falling from last year's figures.

Belgium's foreign population constitutes 8 percent of the country's population, at 850,077, but it has decreased by over 50,000 over the past three years, in sharp contrast to several other European countries. According to a study by the National Institute for Statistics, the country's number of foreign residents shrunk by 53,000 between 1998 and 2003. The Institute said it would carry out further studies to determine the cause of the population decrease.

According to Thailand's Bangkok Post, Prime Minister Thaksin Shinawatra has ordered National Police Chief Pol Gen Sant Suratanont to "come down hard" on corrupt immigration officials who may have allowed terrorists into the country. Pol Gen Sant said at least three immigration policemen at one checkpoint would be fired and another 20 were awaiting transfers to "inactive posts."

Migrationwatch UK, a British think tank, recently warned it expects a surge of new immigrants to be four times greater than the government has publicly stated, after the European Union expands next May. According to a study by the group, at least 40,000 migrants a year will begin arriving from countries such as Hungary, Poland and the Czech Republic, calling the government's lower figures of between 5,000 and 13,000 "simply not credible."

9. Legislative Update

There is no new immigration-related legislation in Congress to report this week. For a review of all the immigration bills introduced this year, visit our legislative chart at www.visalaw.com/advocacy.html.

10. Human-Rights Activist Arthur C. Helton Killed In Baghdad Bombing

Arthur C. Helton, one of the country's most distinguished immigration lawyers, died at the age of fifty-four on August 19 in the bombing of the United Nations Headquarters in Baghdad. Mr. Helton, a lawyer and human rights activist, served as the Program Director of Peace and Conflict Studies and Senior Fellow for Refugee Studies and Preventive Action at the Council on Foreign Relations. Mr. Helton was in Baghdad to determine humanitarian conditions in Iraq.

Mr. Helton graduated from Columbia College in New York City in 1971 and received his Juris Doctorate from New York University Law School in 1976. From 1982 to 1994, Mr. Helton directed the Refugee Project at the Lawyers Committee for Human Rights. In 1994, Mr. Helton founded and directed the Forced Migration Projects at the Open Society Institute. He joined the Council on Foreign Relations in 1999. Mr. Helton also taught courses on migration and forced displacement at New York University's School of Law (1986-1999) and Central European University in Budapest (1997-2000) and was an adjunct professor at Columbia University Law School (2001 to 2003).

During his career, Mr. Helton wrote over eighty scholarly articles and contributed to books on refugees. He co-authored *Forced Displacement and Human Security in the Former Soviet Union: Law and Policy* in 2000. In 2002 he authored *The Price of Indifference: Refugees and Humanitarian Action in the New Century*, which analyzed refugees policy responses in the 1990s. In addition, Mr. Helton testified as an expert before Congress and in the U.S. courts on many occasions on the rights of illegal aliens and refugee protection.

In 1987, the New York University Law Alumni Association awarded him with the Public Interest Award. The president of the Republic of the Philippines awarded Mr. Helton with the 1991 Ninoy Aquino Refugee Recognition Award. In 2001, he received the Immigration and Refugee Policy Award from the Center for Migration Studies. And in 2002, Mr. Helton was awarded the Award for Distinction in International Law and Affairs of the New York State Bar Association.

Mr. Helton advocated for the rights of refugees and the displaced. President of the Council on Foreign Relations Richard N. Haass said that Mr. Helton "had devoted his life to improving the lives of others" and was in Iraq "to help find ways to relieve human suffering." At the time of the bombing attack, Mr. Helton was in a meeting with U.N. Special Representative for Iraq Sergio Vieira de Mello, who was also killed.

11. Diversity Visa Lottery To Accept Electronic Applications Only

In place of paper applications for the diversity visa lottery, the State Department (DOS) is now accepting electronic applications only. Applications filed electronically will cost the DOS less money, reduce duplicate filings and be more reliable than mail service. Applicants will apply through the consular affairs web site and will be required to submit a digital photograph. There is no fee for this service.

All applications will be received by the Kentucky Consular Center, which will then place the application into one of six geographic regions and assign the applicant an individual number. Within each region, the first applicant randomly selected will be the first person registered, the second applicant selected will be the second person registered, etc. When a case is registered, the applicant will immediately be sent a notification letter that will give visa application instructions.

According to the Department of State, all applicants will be informed promptly of their place on the list. Each month visas will be issued, according to registration lottery rank order, to those ready for visa issuance for that month. Once 50,000 visas are issued, the program ends. The State Department will notify only the winners by mail between May 2004 and July 2004. If an applicant does not receive a registration notification letter by August 2004, he did not win the visa lottery.

Winners of the lottery will pay a special DV-2005 case-processing fee and will also have to pay regular visa fees at the time of visa issuance. Registrants for the DV-2005 lottery will have to have their visa in hand by September 30, 2005 at the latest.

For detailed information on this year's lottery, visit the Siskind Susser Green Card Lottery Center at www.visalaw.com/greencard.html.

12. Canadian Corner

AUGUST 2003

Temporary Suspension of Removals to Liberia

The Citizenship and Immigration department is temporarily suspending removals to Liberia. CIC will conduct another review the country conditions in six months.

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

13. Department Of State Adopts Final Rule On Automatic Visa Revalidation

Effective August 18, 2003, The Department of State has adopted as final an interim rule published in the Federal Register on March 7, 2002, amending the regulation pertaining to Automatic Visa Revalidation.

The rule was proposed in order to allow increased screening of visa applicants, in light of the Sept 11 attacks. The rule limits the accessibility of automatic revalidation and is no longer available to those applying for a new visa while traveling temporarily to an area covered by the automatic revalidation privilege. It is also no longer available to nationals of countries listed as state sponsors of terrorism.

According to the federal register, officials believe the new limitations would protect against the possibility that a visa applicant will be found ineligible but will have returned to the United States using the automatic revalidation privilege while the application was pending.

The DOS said it received 300 comments on the proposed rule, though "half or more... were verbatim in full or in part with a sample proposed response that circulated through the foreign student community," most commonly complaining that the rule was unfair or inconvenient.

In response, the Department said automatic revalidation is a privilege, not a right, and while the provision was "intended primarily to recognize that persons lawfully in the United States may have occasion to cross into and out of Canada or Mexico for brief, casual visits," but that it regrettably "became a vehicle for aliens whose visas had expired and who wanted to travel to more distant countries not within the scope of the automatic revalidation regulation," concluding, "this was not the original intent of the regulation."