

Siskind's Immigration Bulletin  
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Siskind Susser serves immigration clients throughout the world from its offices in the US, Canada, Mexico, Argentina 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 Siskind. Associate Editor: Esther Schachter. Contributors: Penny Egel, Paola Palazzolo, Maryam Tanhaee and Megan Turngren.

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Visit [Visajobs.com](http://www.visajobs.com), the online career network, and create your new account (<http://www.visajobs.com>).

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1. Openers

Dear Readers:

This week we include the fourth of our J-1 waiver flowcharts. This one deals with persecution-based waivers. This is a waiver category that is not used often and many immigration lawyers mistakenly advise their clients that the persecution category is

always inferior to getting asylum status. It is true that being granted asylum means quick work authorization and a straightforward path to permanent residency. But asylees with a J-1 home residency requirement can only get permanent residency by filing for adjustment based on their asylum status. Waits in that category are more than four years right now. However, if one can get a persecution waiver, then any permanent residency category can be used, including ones that can be completed much more quickly.

This week also saw the governor of California following through on one of his campaign promises – the repeal of a law that allows undocumented immigrants to qualify for driver's licenses. I personally have always had favorable feelings about these laws and it is not just because I am pro-immigration. I worry about millions of people driving in this country without licenses. The ability to get a driver's license motivates people to learn the rules of the road and everyone is safer as a result. We are a driving culture and it is a mistake to believe people will not drive if they are barred from getting a driver's license. We know from generations of experience that this is simply not the case.

So why do people have problems with granting the undocumented driver's licenses? There are legitimate objections. First, there is the national security concern. Driver's licenses are government identification documents and they are, in many ways, the ticket to moving around in society. Some of the 9/11 hijackers had driver's licenses and critics of the liberal licensing policies believe that the terrorists would not have had such an easy time operating in the US without the licenses. Another argument is that driver's licenses reward illegal behavior. Why should people respect our immigration laws when there are no consequences for failing to adhere to the rules?

But maybe we are better off addressing the bigger question? Why are an estimated 10 million people here illegally in this county? What would happen if they were not here? Do we need them? If we do, why can't we find a way for employers to be able to legally bring in foreign workers to fill jobs that would otherwise remain unfilled? If we had a genuine guest worker program in this country, the driver's license debate would largely fade to the background. And by changing our laws to create a way for lesser skilled workers to work legally in the US, we can bring these people back out into the open and law enforcement authorities will have an easier time tracking terrorists.

In firm news, I congratulate my law partner Lynn Susser in receiving her AV rating from Martindale Hubbell. The Martindale Hubbell rating has become the hallmark rating for the better attorneys around the US and it is one that is known to most attorneys. The Martindale folks survey lawyers in communities across the country and ask those surveyed about the legal abilities and ethical standards of attorneys being rated. The AV rating is the highest rating one can attain. To learn more about the ratings process, you can go to [http://www.martindale.com/xp/Martindale/About\\_Us/Ratings/ratings\\_intro.xml?PRV=LL2&searchid=](http://www.martindale.com/xp/Martindale/About_Us/Ratings/ratings_intro.xml?PRV=LL2&searchid=). Well done Lynn!

Finally, as always, we remind readers that we're lawyers who make our living representing immigration clients and employers seeking to comply with immigration laws. We would love to discuss becoming your law firm. Just go to <http://www.visalaw.com/intake.html> to request an appointment or call us at 800-748-3819 or 901-682-6455.

Regards,

Greg Siskind

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2. The ABC's Of Immigration – J-1 Flowchart #4: J-1 Persecution Waivers

This is the fourth in a series of flowcharts for J-1 visa holders with a two-year home residency requirement. The flowchart linked below shows how J-1 holders can determine if they qualify to apply for a persecution waiver.

J-1 Persecution Waiver Flowchart:

<http://www.visalaw.com/03dec2/persecutionwaiver.pdf>

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3. Ask Visalaw.com

*If you have a question on immigration matters, write [Ask-visalaw@visalaw.com](mailto: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 read the Bulletin religiously. I would appreciate if you consider these 2 questions for publication. "My mother is in the process of getting her green card as parent of US citizen (my sister). I am currently 20 years old. If my mom files a petition for me before the 21st birthday, would my place in the 2A preference category be preserved even after I turn 21? If my sister also files for me as sister of USC, would it be valid since there already is an outstanding petition?"

A - Unfortunately, it would not be enough that you are under 21 when your mother files for your green card. You need to be under 21 when a green card becomes available to you in the visa queues. But the wait will be several years. You can subtract from your age at that point the amount of time your I-130 will have been pending. But it is pretty unlikely that it will have been pending longer than the time it will take for your place to come up in the queue.

As for your sister, you can have multiple I-130s pending from different relatives. This is quite common.

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Q - I am on a J-1 visa and subject to the two-year residency requirement related to a Fulbright I received to come to the US. I plan to fulfill the requirement in pieces by spending periods of time in Germany over the next years. What kind of evidence do I need to provide to the State Department that I actually spent the time in my home country. In addition, if I stayed, let's say several months in Germany, would brief visits to other countries be subtracted from that time?

A - You must serve the home residency requirement in your home country. Time spent in other countries - even brief periods - don't count. As for documenting that you have been in Germany, remember that the burden is on you. You can show passport stamps, pay stubs, bank statements, receipts, rent records, etc.

By the way, while I used to tell Fulbright recipients that waiver applications were hopeless, that has largely changed for the better in recent months.

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Q - When I was 3 years old my parents brought me to the US under the intent of staying here for only months. I am now 17, and needless to say our visa has long expired. I have recently tried filling out college applications for fall 2004 and find that I keep running into numerous problems, such as my status, and my alien registration number. Is there anything that could help me at all, or is there a possibility that I would need to move back to my home country and acquire a student visa?

A - Unfortunately, you can basically forget a student visa and just about any other temporary visa given the long overstay. No consulate is likely to give you a visa since you have to show no intentions of remaining permanently in the US. You're going to probably have to look at green cards or otherwise consider difficult choices. Your very long overstay will not look good even if you are not subject to a reentry bar (due to your being under age 18). I suspect you'll have to hope for Congress to pass a bill called the DREAM Act, which would allow people like yourself to legalize. Other options might be open depending on your parents' situation. You would be wise to at least consult with an immigration lawyer to review your situation. Once you turn 18, the consequences of your overstaying your visa could get worse so this is a good time to discuss your case with counsel.

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Q - Hi. I just became a permanent resident and am married to a US citizen. How long will it take for me to apply for citizenship and be granted? My next question is this: my mother lives in the Caribbean and I'd like to file a petition on her behalf. Is there anything in my way or in the law that says I have to be a citizen before filing such a petition?

A - You'll be able to apply for citizenship 2 years and nine months from the date your permanent residency was granted (assuming you are still married and together at that point).

To sponsor your mother for a green card, you need to be a US citizen.

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Q - Just want to know if the category you filed during the green card processing also matters in the "third step"--Adjustment of Status? I know whether you filed in EB1, 2 or 3 matters in the I-140 filing, but does it also have effect on the I-485? Often I heard people saying if filed in EB1 you will have a faster processing in I-485 than other categories, is this true?

A - The employment-based category chosen should make know difference on I-485 processing times.

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Q - I'm a Malaysian student in Canada. My fiancé is an American citizen, residing there. If we were to marry in the states with a K1 visa for me, about how long would it take for me to get a PR status? Can I return to Canada to complete my studies immediately after marriage? If so, can I still visit my husband until we live together?

A - You can expect it to take about six to nine months to get a K-1 or K-3 visa. The green card process will vary from place to place and I would suggest you consult our web site at [www.visalaw.com/processing.html](http://www.visalaw.com/processing.html) to check district office I-485 times. Before getting the green card, you can remain outside the US for much of the time the case takes to process in the US. Just get a travel document and then extend it a year at a time until the case is processed. You need to be careful about remaining outside the US for extended periods, however, after the green card is granted or you could be deemed to have abandoned your status and would have to start over. You can learn more about this by reading the article on my web site at <http://www.visalaw.com/01jan4/12jan401.html>.

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Q – Can an H1-B Employee take leave of absence for personal reasons to go to home country? If it's possible, what is the valid period?

A - You can always go to your home country and as long as you are returning to the same job you left, you should be fine. If the job has changed, then it may be necessary to amend your H-1B petition or file a new petition.

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Q - I have a pending I-130 application with UCIS and I am planning to relocate to another State. Will I maintain my Application Receipt Number / the original date of my application or will I have to start all over again?

A - Moving will not affect your I-130's validity. However, if you are in the US, keep in mind that you are required to notify USCIS each time you relocate.

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#### 4. Border and Enforcement News

About 50,000 vehicles traveling from Mexico to the U.S. each day are spending two hours waiting in 24 lanes at the San Ysidro Port of Entry in San Diego, California. Each vehicle is given a cursory inspection because according to officials, if inspections were a few seconds longer, wait times would increase to the point that commerce and tourism in the U.S. would be severely damaged. Because the new plan to use biometric technology to track foreigners entering and leaving the U.S. could make San Ysidro more congested, the government is considering adding 50 northbound booths to the port.

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Sentences handed down to those convicted of people-trafficking may become more harsh as officials try to cope with the shift by criminals from drug smuggling to people smuggling. As a result of more lax sentences for people smugglers compared to drug smugglers, the US Sentencing Commission is currently analyzing ways to make the smuggling of illegal immigrant across US borders less appealing.

New penalties will require a harsher sentence when smuggling cases involve children or if the smuggler has prior convictions. The commission also plans to increase the sentence of a smuggler who knowingly brings someone to the US who intends to commit a crime, such as a terrorist.

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Over the last several years, ICE agents have been stationed in five Colorado cities to catch smuggled illegal immigrants who have been stopped on the highways by the State Patrol or local police. This has increased the number of illegal immigrants caught in Colorado, who are then sent to area prisons.

The Aurora, Colorado detention center has plans to double its number of beds to 750 in order to accommodate the increasing number of illegal immigrants who are caught on Colorado roads. The center holds individuals awaiting their deportation hearings as well as immigrants who have already lost their cases and are waiting to be transported out of the U.S. When the center has no more room, the captured individuals are sent to prisons in Trinidad and Fairplay.

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Department of Homeland Security (DHS) Secretary Tom Ridge announced the success of ICE Storm, the multi-agency operation created to curb smuggling. In the past two weeks, 18 individuals have been indicted on hostage-taking charges connected to smuggling illegal immigrants into the US. Since ICE Storm began in September, 81 individuals have been arrested and charged with smuggling related crimes.

Ridge also pointed out that ICE Storm has been successful in crippling the financial infrastructure of highly lucrative smuggling organizations. In the past two weeks, \$1.1 million in smuggling-related funds have been frozen. Since September, a total of \$1.4 million has been frozen or seized.

Authorities have introduced a "Most Wanted" list with the fugitives linked to violent smuggling incidents in the Phoenix, Arizona area. ICE also has a tip line, 1-866-DHS-2ICE, for information on suspected smuggling activity.

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A new barrier at Organ Pipe Cactus National Monument will be constructed by the National Park Service in order to keep illegal drugs and immigrants from being smuggled over the border between the US and Mexico. The barrier will be made of old railroad rails, buried five feet underground and welded into a ribbon of steel. The barrier won't keep out smugglers traveling on foot; it is meant to deter vehicles and

the damage they cause when they tear across protected plants and make paths in the fragile desert soil.

US Customs and Border Protection is considering building similar barriers to go along the 1,900-mile US-Mexico border.

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A new US Customs and Border Protection (CBP) program, which will counter terrorism and facilitate international trade, has been extended to the US-Mexico border. The program, known as Free and Secure Trade or FAST, will allow CBP to provide faster processing for companies that use CBP-approved security measures. To receive FAST processing, manufacturers, importers and carriers must participate in the Customs -Trade Partnership Against Terrorism (C-TPAT), another CBP program. Truck drivers who want to be eligible for FAST must submit information to CBP for an analysis of whether the applicant poses a risk to US security. Approved drivers will receive a FAST-Commercial Driver Identification Card.

FAST has been operational at the US-Canada border since September 2002.

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Coast Guard interceptions of migrant boats bound for the US from Cuba and Haiti are becoming much more frequent according to recently released statistics. In 2003, 6,068 migrants were stopped from reaching US shores, up from 5,142 interceptions in 2002 and 4,136 in 2001. The 2003 fiscal year ended on September 30; since this time, there have been 4,720 interceptions. Haitians compose the majority of migrants intercepted, followed by Dominicans and then Cubans.

The larger numbers do not necessarily mean more migrants are trying to enter the US. Authorities attribute the greater amount of interceptions to interagency cooperation. Because the Coast Guard, US Customs and Border Protection and immigration were merged into the Department of Homeland Security, the agencies have more interaction with one another and can share resources.

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Austin J. DeCoster, one of Iowa's largest egg producers and the owner of DeCoster Farms, was sentenced in federal court to five years of probation for knowingly and repeatedly hiring illegal workers. DeCoster could have received up to six months in prison, but the judge commented that DeCoster has now made efforts to comply with immigration regulations and had already paid a large amount in fines. However, the judge has informed DeCoster that his probation would be revoked if he violated the terms of his plea agreement.

Between January 1997 and February 2002, immigration officials detained many DeCoster workers. In August 2003, DeCoster admitted that he had ignored the fact that some of his workers were illegally in the US. DeCoster paid \$2 million in fines, settlement of a forfeiture claim and restitution to cover the costs of removing the illegal workers and of monitoring his egg farms over five years. DeCoster also agreed to surprise inspections and to allow immigration officials to have open access to his books.

Other DeCoster employees were sentenced for knowingly hiring illegal workers and helping them avoid detection by immigration officials.

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Armando Robles-Rosales, a Mexican national and US boxing champion, pleaded guilty to illegally entering the US after being deported five years ago. Robles, an undocumented worker, can face up to twenty years in prison before being removed from the country. His sentencing is scheduled for February 23, 2004.

Robles has lived in the US since age five and does not speak fluent Spanish. He has a wife and two children, and works in construction when he is not boxing. In August, Robles appeared in court after it was discovered that there was a warrant out for him for a traffic violation. An investigation uncovered that Robles is also known as Alvaro Alex Robles-Rosales, that he had been jailed for two years for assault with a knife and that he had been deported in 1998.

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A couple in New Mexico has been charged with smuggling over 100 undocumented immigrants into the US over the past year in addition to holding a Guatemalan woman and her two sons in their trailer to secure payment for their passage. Both Rosa and Ramon Armendariz have confessed to the smuggling charges but deny the kidnapping charges. The Armendariz's are green card holders and will now face deportation.

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## 5. News From The Courts

People v. Bruce McDonald  
New York Court of Appeals

According to a recent decision by the New York Court of Appeals, an attorney's inaccurate advice regarding the deportation consequences of a guilty plea constitutes ineffective assistance only if the defendant can show that he suffered prejudice. In *People v. McDonald*, the Court said that inaccurate advice in an immigration matter may be grounds for reversal due to ineffective assistance of counsel.

Bruce McDonald has legally lived in the U.S. for over twenty years. He is married to a U.S. citizen and has three children, all of whom were born in the U.S. In 1999, McDonald was arrested on several drug-related charges, which were likely to bring a sentence of 25 years. His attorney advised him to plea bargain, and McDonald received a one to three year sentence for selling marijuana and possession of cocaine. The day after sentencing, McDonald was served with a notice of deportation.

McDonald's attorney submitted an affidavit that he had misinformed his client about the deportation consequences of pleading guilty. He claimed that the prosecutor had also given a similarly inaccurate opinion about deportation during plea negotiations. The Appellate Division asserted that inaccurate counsel does not constitute ineffective counsel.

The Court of Appeals agreed with this decision. According to *Strickland v. Washington*, a defendant claiming he had ineffective counsel must demonstrate both that the level of representation was substandard and that the defendant suffered prejudice. The Court also stated that it could not reverse the guilty plea entered by McDonald because McDonald did not demonstrate that he would not have pleaded guilty if he had not been given the incorrect advice.

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Pradith v. Ashcroft  
US District Court for the District of Oregon  
CV 03-1304-BR

Davone von Pradith, a Laotian national with legal permanent resident status in the U.S., was is in the custody of Immigration and Customs Enforcement pending his deportation. Pradith petitioned the Court for a Writ of Habeas Corpus and to be released from custody. The Court granted his Writ of Habeas Corpus and ordered his immediate release.

Pradith came to the U.S. in 1971. His parents and two children are U.S. citizens. In June 1999 he was indicted with others for violations of Oregon law on one count of delivery and one count of conspiracy to deliver heroin in excess of five ounces. Pradith was advised by his attorney that a plea agreement would not prevent him from seeking a cancellation of a removal order because an alien convicted of a crime that is not an aggravated felony under federal law may petition the Attorney General to cancel a removal order based on such a conviction. In February 2000, Pradith entered a plea agreement and pleaded 'no contest' to a lesser charge.

In June 2003, Pradith applied for a replacement for his permanent resident card. During a routine check into Pradith's criminal record, his 1999 felony conviction was discovered. When Pradith went to an ICE office to replace his card, he was taken into custody.

In July 2003, when Pradith appeared before an Immigration Judge (IJ), the IJ informed him that he was ineligible for cancellation of a removal order because of the BIA's decision in *Yanez-Garcia*. In September 2003, ICE issued a notice of removal to Pradith. Since July 2003, Pradith has been in ICE custody. In September 2003, Pradith filed a Petition for Writ of Habeas Corpus. In October 2003, he filed a Motion for Order to Show Cause why his Writ should not be granted.

Pradith argued before the Court that his being held in custody is in violation of his due process and equal protection rights under the Fourteenth Amendment. He argued that it is unconstitutional for *Yanez-Garcia*, which was decided in May 2002, to be applied to his case retroactively.

The Court found that Pradith's reliance on advice from his attorney in his plea agreement was reasonable "in light of the state of the law at the time." The government argued that retroactively applying *Yanez-Garcia* was not an issue because the statutes applicable to Pradith were enacted before he committed his criminal actions. However, the Court found that Pradith asserted not that the government applied the immigration statutes retroactively, but that the government applied the BIA's interpretation of the statutes retroactively.

Citing *Gonzales-Gonzales*, the Court found that “it is fundamentally unfair for an alien such as [Pradith] to be subject to a changed definition of aggravated felony that results in his inability to seek cancellation of his removal from the United States.” Because the BIA changed its interpretation two years after Pradith entered his plea, and because Pradith relied on the original precedents when he entered his plea, the Court concluded that the government violated Pradith’s due process rights when it applied *Yanez-Garcia* retroactively.

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## 6. Government Processing Times

Processing times are available this week for the following service centers:

Nebraska (12/01/2003): <http://www.visalaw.com/nebraska.html>

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U.S. Citizenship and Immigration Services has made available an online list of processing times for District Offices, Service Centers and the National Benefits Center at <https://egov.immigration.gov/graphics/cris/jsps/index.jsp?textFlag=N#>.

Please note that the times published by USCIS often differ from the times published by an observer organization, AILA. We have no way of telling readers which data is more accurate.

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## 7. News Bytes

After the Homeland Security Act became law in 2002, INS (now USCIS) was transferred to the Department of Homeland security. USCIS has provided a list of links with information about the new locations, responsibilities and contacts for the former INS immigration services and immigration enforcement units at <http://uscis.gov/graphics/othergov/roadmap.htm>.

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Mexico’s Foreign Affairs Ministry has appointed Luis Caberra Cuaron as the new consul general for San Diego. Caberra, a minister currently assigned to the Mexican Embassy in Washington D.C. will fill the position pending ratification from the Mexican Senate.

Mexico considers the San Diego office the third most important consulate of the 48 in the United States, because it handled 5,000 cases in the past year. These cases included circumstances such as incarcerated immigrants, children detained at the border trying to enter the country illegally and bodies needing to be returned to Mexico. The San Diego-Tijuana border has to tackle daily issues such as drug trafficking, increasing commerce and illegal immigrants.

The San Diego consulate is increasing their personnel due to the large Latino population in San Diego County, with a majority of the 75,000 Latinos either Mexican or Mexican-American. It processes an average of 100 consular identification cards every day.

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After being required to document their immigrant status, more than 200 employees at the T.J. Maxx Distribution Center in Evansville, Indiana, quit their jobs. The company hired a consultant to check on the immigrant status of workers throughout the corporation, which found discrepancies in the work documentation of 261 workers at the Evansville distribution center. Employees began leaving T.J. Maxx almost immediately after they were told to document their immigrant status.

Earlier this year, a search of 180 job applications at the T.J. Maxx facility in Pittston Township, Pennsylvania, by the U.S. Department of Homeland Security discovered 90 illegal workers.

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A Medicare bill, which includes a clause that gives hospitals at least \$1 billion to hospitals for emergency care to uninsured and undocumented immigrants, has won final congressional approval. Although the legislation calls for the funds to be distributed on a first-come, first-served basis, funding formulas will give preferences to states with significant numbers of undocumented immigrants, including Texas, Arizona and California, where millions of dollars of unpaid medical bills are generated by undocumented immigrants.

This provision in the bill comes after a study was done on the impact of the federal Emergency Medical Treatment and Labor Act on border-state hospitals. The study found that hospitals in Arizona, California, New Mexico and Texas spent \$190 million in 2000 on emergency medical treatment for undocumented patients.

Hospitals are required by federal law to care for all patients, regardless of insurance status or citizenship. The \$1 billion will help compensate doctors and ambulance companies that provide immigrant care.

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The day after Thanksgiving, the Department of Homeland Security released a request for proposals to build the new immigration tracking system known as US-VISIT. The nation's biggest information technology and engineering companies will vie for the estimated \$10 billion contract.

The company hired will serve as the US-VISIT prime contractor and will be responsible for the design and implementation of the system which will be used to collect biometric information such as fingerprints and photographs from the millions of visitors who enter and exit the US each year.

The over 200-page request for proposals was posted on the DHS website ([http://www.dhs.gov/interweb/assetlibrary/US-VISIT\\_RFP\\_HSSCH004R0096.pdf](http://www.dhs.gov/interweb/assetlibrary/US-VISIT_RFP_HSSCH004R0096.pdf)). The DHS has already narrowed the list of potential contractors to teams of three companies. The winning company will be announced by May 2004.

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The Bush administration has announced that the Transit Without Visa and International to International programs will remain suspended for at least another month. Due to concerns that potential hijackers would exploit these programs, they were suspended on August 2, 2003 for a period of 60 days so that the government could find ways to make them more secure. The programs have been suspended for over 120 days as officials continue to assess the programs.

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According to a report done by the Institute of International Education, the number of Middle Eastern students attending colleges and universities fell by 10 percent last this past academic year. Additionally, declines in new student enrollments from Saudi Arabia, Pakistan and the United Arab Emirates were reported from more than one-fourth of the 276 educational institutions surveyed last month.

The institute reported that an increase in the number of students from India, Korea and Kenya offsets the decrease in students from the Middle East, Indonesia, Thailand and Malaysia. Peggy Blumenthal, vice president of the institute, attributed the decreases to the federal government's new post-9/11 visa application process, a sluggish world economy and increased competition for students from countries such as the United Kingdom.

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Despite the recent Wal-Mart raids by federal immigration agents, workplace crackdowns of illegal employees are still rare, according to data recently reported by the Associated Press. This decline is due to a new focus on national security, as fewer employer busts and fewer illegal employees have been arrested since the late 1990s.

The Associated Press analysis of federal immigration data has tracked the drop in workplace enforcement. The analysis found that there was a 70 percent decline over the past three years in completed employer investigations. While more than 200,000 businesses are believed to employ undocumented workers, according to the General Accounting Office, only 53 employers were fined in 2002. In 1998, the equivalent of 344 full-time agents worked on employer investigations, but by 2001 that number had fallen to 124, according to the General Accounting Office.

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The USCIS Texas Service Center, in cooperation with the USCIS Nebraska Service Center, has moved the processing date for preference category I-130s to October 1, 1998 and the processing date for the immediate relative category I-130s to June 25, 2001.

Preference categories include the following: a US citizen filing for an unmarried son/daughter over age 21, a US citizen filing for married son/daughter over age 21, a US citizen filing for brother/sister, a permanent resident filing for spouse or child under age 21 and a permanent resident filing for unmarried son/daughter over age

21. Immediate relative categories include a US citizen filing for a spouse, parent or child under age 21.

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## 8. International Roundup

The Dutch cabinet is considering closing the Netherlands' borders to Eastern Europeans for a period of two years as a majority of members of parliament are concerned that the Netherlands will be overflowed with cheap labor from countries such as Poland, and Latvia, thereby making it harder for unemployed Dutch nationals to find jobs.

The Netherlands is not alone in its decision. The number of EU member states will expand by 10 next year, and Germany and Austria have already resolved to close their borders for two years to East European workers. Other EU member states are considering following suit.

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Ali Cetin, a Turkish asylum seeker and an Australian citizen, has been identified by a group of Turkish Kurds as the person who helped smuggle them to Melville Island. Cetin has denied these charges. Members of the group also identified two other Turks involved in the people-smuggling operations.

Some of the group say they wanted to get to Australia for higher-paying jobs, not to flee Turkish Government persecution, as several had claimed. Eight of the men now plan to stay in Indonesia, where they hope to get refugee status, while six plan to return home to their jobs and families in Turkey.

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The Canadian Ministry of Citizenship and Immigration (CIC) has cleared the backlog of applications for its new landed immigration identification card, known as the "Maple Leaf", by keeping its offices open at night and on weekends. CIC has reported that the applications are being processed as soon as they arrive.

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## 9. Legislative Update

The Senate unanimously voted to allow Hitesh Tolani, an Indian national and Wofford College honors student to stay in the US. When applying for college scholarships, Hitesh discovered he was an illegal alien and approached the then-INS to clear up the matter of his status. Hitesh has a fifteen-year-old brother who is a US citizen. The House must pass a similar pending 'private relief' bill in order to clear up Hitesh's status in the US. Both bills must then be signed by the President.

For a review of all the immigration bills introduced this year, visit our legislative chart at [www.visalaw.com/advocacy.html](http://www.visalaw.com/advocacy.html).

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10. Canadian Corner – December 2003

**PERMANENT RESIDENCE CARDS (PR CARD) WILL BE MANDATORY FOR CANADA'S PERMANENT RESIDENCE ON DECEMBER 31, 2003.**

**PERMANENT RESIDENCE WILL NOT BE ABLE TO BOARD A CARRIER TO CANADA OR ENTER CANADA ON DECEMBER 31, 2003 WITHOUT THE PR CARD.**

**NO EXCEPTIONS.**

Just a quick note to remind Canadian landed immigrants that on December 31, 2003 the permanent resident card will be mandatory for permanent residents wishing to re-enter Canada aboard any commercial carrier (airplane, boat, train or bus).

Without the PR card, landed immigrants will not be able to enter Canada after December 31, 2003. The carriers will not permit landed immigrants to board without the PR card.

Immigration Canada has recently announced that landed immigrants who are presently out of Canada and do not have a PR card but plan to return to Canada on or after December 31, 2003, must visit a Canadian visa office overseas to obtain a one-time special visa.

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

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11. Immigration Advocates Still Worried About Special Registration

After the Department of Homeland Security (DHS) released its announcement "ending" Special Registration last week, many individuals with Special Registration requirements assumed that the Special Registration was history. However, the DHS did not suspend the entire program and immigration advocates are worried that affected individuals will not get the word that they may still be subject to certain registration requirements. The major change to Special Registration is the end of the annual re-registration for all registrants and the 30/40-day follow-up interviews for port-of-entry applicants. All other aspects of the program remain unchanged. Anyone who does not comply with the requirements of Special Registration may be subjected to criminal prosecution, deportation and removal proceedings, denial of immigration benefits or denial of admission to the US.

The new rule implemented on December 2, 2003 applies only to those individuals whose re-registration deadline or 30/40-day deadline is on or after this date. Anyone who missed the deadline before December 2 is considered to have violated Special Registration. The new rule does not excuse past failure to comply with call-in deadlines, annual registration deadlines or the follow-up interview. Also, the new

rule does nothing for those individuals who were placed in removal proceedings when they appeared for the call-in.

All Special Registrants are still required to complete their departure registration at a qualified airport and report any change of address, employment or educational institution. Any nonimmigrants who are citizens or nationals of Iraq, Iran, Libya, Sudan and Syria who enter the country at a port-of-entry will be subject to Special Registration. Nonimmigrants from other countries may be subject to Special Registration as well, on a case-by-case basis.

DHS may require certain individuals to re-register at any time, with only ten days notice. Anyone who has ever been registered under Special Registration should watch for information regarding re-registration.

The new rule regarding Special Registration is an interim rule. It is subject to a 60-day public comment period. After this period, DHS could publish a final rule or leave the interim rule in place. If a final rule is published, it may include further changes. DHS may issue new rules and regulations regarding Special Registration at any time.

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## 12. USCIS Introduces New Features on Website

The U.S. Citizenship and Immigration Services (USCIS) website ([www.uscis.gov](http://www.uscis.gov)) has introduced new customer service features, which include credit card payment options and the addition of processing times to the existing case status service. With the new payment features, electronic applications can be processed in a secure environment with real time payment confirmation. Applicants can also access their case status almost anywhere, at anytime with the Internet.

Online case status lets customers obtain information regarding pending immigration benefits applications and when to call the National Customer Service Center for assistance with a case, as well as get current application processing dates. The National Customer Service center's toll free number is 1-800-375-5283.

Customers can now pay application fees online with their Visa, MasterCard, American Express or Discover credit or debit cards, as well as with electronic funds transfers. This is the first time that customers have even been able to charge their immigration fees.

More than 56,000 applications have been filed on the USCIS web site. Currently, applicants can file to renew or replace a green card (Form I-90) or to receive employment authorization (Form I-765). The USCIS received almost 7.2 million immigration benefit applications, averaging about 600,000 per month, in 2003. With the more than 3.2 million people who visit the website each month, the USCIS hopes these new online features will make online filing easier for applicants.

More information on electronically filing applications is available at <http://uscis.gov/graphics/formsfee/forms/efiling.htm> and information on case status and processing times online can be found at <https://egov.immigration.gov/graphics/cris/jsps/index.jsp?textFlag=N>.

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### 13. California License Law for Immigrants Repealed

The California State Assembly has passed a bill that will overturn a new law that would have given driver's licenses to undocumented immigrants by a vote of 64-9. One week before the Assembly vote, the State Senate unanimously voted to repeal the law.

During the California gubernatorial recall campaign, former Governor Gray Davis signed the law, even though he had previously vetoed it. Some felt he signed the law as way to attract Latino voters. After being elected into office, Governor Arnold Schwarzenegger demanded that the law be repealed because it lacked strict background and identity checks to ensure that individuals were obtaining driver's licenses under false pretenses.

The law, known as the Cedillo bill because it was sponsored by State Senator Gil Cedillo (D-Los Angeles), would have allowed an undocumented immigrant to obtain a driver's license by presenting a federal individual tax identification number and forms of identification other than a Social Security number. Essentially, the controversial bill would have repealed the requirement for applicants to prove citizenship or legal residency, and would have allowed undocumented immigrants to obtain licenses. Some California Assemblymen worry that with driver's licenses, terrorists will be able to blend into the population.

Nineteen states currently do not require any proof of legal presence in the US for driver's license applicants. However, the fact that seven of the nineteen 9/11 hijackers had obtained Virginia driver's licenses or state ID cards without showing proof of legal residence has raised security concerns. They used these forms of identification in order to board the airplanes. Virginia has since changed its driver's license laws.

California lawmakers have been under pressure from Republican activists who were campaigning for the law to be overturned through a ballot initiative in March. Senator Cedillo acknowledged that the bill probably would not have survived the ballot as polls indicated that a strong majority of the general public opposed the bill.

Governor Schwarzenegger has promised Senator Cedillo that he will work with him next year on another version of the bill. Schwarzenegger has made it known that he understands the highway safety reasons to license every driver, regardless of their immigrant status. An estimated two million undocumented immigrants drive in California without licenses or insurance.

However, the California Republican Assembly, who had gathered over 400,000 signatures in the past several months in order to place the bill on the March ballot if the Legislature did not repeal it, says it will continue to oppose any bill that grants licenses to illegal immigrants.

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### 14. Irishman Faces Deportation

Despite the Good Friday peace accord, Northern Irish activist Malachy McAllister faces deportation after an immigration court denied his appeal against deportation. Additionally, the Board of Immigration Appeals reversed a previous court decision to grant asylum to McAllister's wife and the couple's four children. Irish activist groups in the US have rallied around the cause of McAllister.

In his youth, McAllister was a member of the Irish National Liberation Army. He argues that he joined the group so that he could fight what he saw as the persecution of Catholics. During his affiliation with the paramilitary organization, he was involved in a plot to kill two officers of the Royal Ulster Constabulary. The officer was wounded in one case, and the plan was never carried out in the other. McAllister served over three years in prison and was released in 1985.

In 1988, masked gunmen fired 26 shots into the McAllisters' home while three of their four children were inside with their grandmother. Soon after, the McAllisters moved to Toronto, and from there, to New Jersey in 1996.

Although the entire family requested political asylum because they knew their lives would be in danger if they returned to their hometown of Belfast, an immigration judge ordered in late 2000 that Malachy McAllister be deported, while granting asylum to his wife because she suffered extreme persecution. McAllister appealed his denial and the government appealed the asylum granted to his wife.

While McAllister was attending a meeting last week at the Capitol Hill office of Rep. Donald Payne, an incoming cell phone call relayed the message that the Board of Immigration Appeals not only had ordered his immediate deportation, but also had revoked the asylum status of his wife and children.

McAllister immediately filed motions with an appeals court in Philadelphia, and won a temporary stay of his deportation, although not of his detention. The same court, however, recently ruled in favor of deportation of another former INLA man, John Edward McNicholl, and refused to hear an appeal to suspend McNicholl's deportation.