

Siskind's Immigration Bulletin  
February 7, 2003

E-mail subscribers as of 10 October 2001: 30,159 persons (50 states/144 countries).  
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Dear Readers:

This has been a sad week, of course, with the loss of America's oldest active space shuttle. By now most of us know the life stories of the seven astronauts. It is hard as an immigration lawyer not to think about one astronaut in particular. Kalpana Chawla was born Indian and died a naturalized American. She entered the US in the 1980s the same way millions of other naturalized Americans have - as a student. While most people did not know Ms. Chawla until her untimely death, she has, for many come to symbolize the American Dream. Ms. Chawla is said to have dreamed of going into space while still a child in India. Like millions before her, she came to America to realize that dream. And her pursuit of that dream enriched her new country as well. Those who paint a picture of immigrants as the source of America's problems should be reminded of Kalpana Chawla and asked whether America would have been better off without her.

There is a lot of other immigration news this week and it comes on a variety of fronts. First, one of the most important trials ever concerning a company's hiring of illegal workers started this week. Tyson Foods, one of America's largest companies, has been indicted on several counts relating to, among other things, alien smuggling. The company is accused of giving its blessing to a scheme where Tyson managers arranged for Mexican workers to be smuggled to the US to work at Tyson plants in the southern US. The INS announced this week that it believes that more than seven million illegal aliens reside in the US. California announced this week that more half of the newborns in the state are Hispanic. The INS believes it has nabbed six terrorists as a result of the special registration process, a fact, if proven true, that will no doubt bolster the arguments of those supporting the controversial program. And there is much more news as well that we cover this week. We also have our regular features as well.

This week we also are pleased to announce that Siskind, Susser, Haas & Devine's web site was selected as the best web site in the nation in the 2003 IMA awards for law firm web site design. We normally don't write stories about ourselves in our newsletter, but this is not a typical event so we're going to bend our usual rules.

By the way, we hope you like the look of this week's issue. We are now publishing the newsletter in two formats - formatted HTML and plain text. If you are receiving this week's issue in HTML we hope you find the format more attractive and readable. If you are getting this in text and want to switch to HTML, you can go to [www.topica.com](http://www.topica.com) and log into your subscription page for our newsletter and change the format.

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

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## 2. THE ABC'S OF IMMIGRATION – VISA OPTIONS FOR NURSES, PART I

The following is the first of a two-part article on immigration for registered nurses that we previously published in our ABC's column. It has been updated, however, to include several recent developments affecting nurses. The article was authored by several SSHD attorneys including Kristi Crawford, partner in SSHD's Raleigh-Durham office, Cynthia Ryan, partner in SSHD's New York City office, Karen Weinstock, partner in SSHD's Atlanta office and Greg Siskind, a partner in the firm's home office in Memphis.

### **Understanding Non-immigrant and Immigrant Visas**

A growing shortage of nurses in the United States has forced many health care employers to look overseas for the nursing talent needed to care for American patients. But bringing those nurses to the US is challenging.

Nurses can enter the US in either non-immigrant or immigrant status. But before reaching the question of whether a nurse is best suited for immigrant or non-immigrant status, it's best to begin with an overview of immigration principles. "Immigrant" and "Non-Immigrant" are legal terms which have specific meanings. Every person applying for admission to the United States is considered to be an intending immigrant; and it is up to the person seeking admission to prove that they only intend to stay temporarily as a non-immigrant. This question becomes vitally important when a person applies for a visa because a consular officer has complete discretion to deny a request if he or she is not satisfied that the alien will leave the United States when their visa period expires. In short, if the alien is deemed to have immigrant intent when applying for a non-immigrant visa, the application will be denied.

Non-immigrant visas typically allow foreign nationals for a limited period for a specific purpose. Such purposes include undergraduate or graduate study or employment with a sponsoring company or organization. Non-immigrant visas are designated by letter, each letter corresponding to a different type of visa (B-2, F-1, H-1B, etc.).

Immigrant visas, on the other hand, permit foreign nationals to enter the U.S. to remain indefinitely as permanent residents. Rather than show that they only intend to stay in the U.S. for a limited time, a person applying for an immigrant visa needs only to prove that they meet the requirements of the visa classification and that they are not "inadmissible". The grounds for inadmissibility include certain criminal convictions, communicable diseases, and terrorist activity.

When a person comes to the United States with an immigrant visa, they enter as legal permanent residents and will be issued an Alien Registration Card as proof of their status. Permanent resident status is popularly known as having a "green card." Green cards are no longer green, but the popular name has remained the same. Permanent residents are entitled to work, travel freely, and to remain indefinitely. However permanent residence can be abandoned or taken away, and it does not give some of the rights that U.S. citizens enjoy. Therefore, some permanent residents opt to apply for naturalization and become U.S. citizens. One cannot apply for citizenship before being a permanent resident first.

## **Non-Immigrant Visa Options**

Under current U.S. immigration laws, non-immigrant visa options for nurses are limited, mainly because most employers only require a two year degree rather than four-year bachelor's degree and because most states do not require bachelor's degrees for a nurse license.

During the last nursing shortage, the U.S. Congress carved out a specific non-immigrant visa category, designated H-1A, for registered nurses. This visa type did not become a permanent part of the immigration laws, and was allowed to expire on September 1, 1995, when Congress believed the shortage had subsided. A similar provision, which would provide a new visa category for general registered nurses, is currently under consideration by Congress, and will be discussed separately below.

### **H-1B Visas**

The H-1B "Specialty Occupation" visa is available to individuals who can demonstrate qualification in a "specialty occupation" and who are sponsored by a U.S. employer to work temporarily in the U.S. in a "specialty occupation". The Immigration & Nationality Act defines a specialty occupation as "an occupation that requires (A) theoretical and practical application of a body of highly specialized knowledge, and (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States." Persons who typically will be eligible for this visa include members of the professions such as engineers, teachers, lawyers, as well as scientists and other highly qualified persons.

Through policy memos and case decisions, the Immigration and Naturalization Service has determined that nursing, as a profession, is not a per se a specialty occupation, since a bachelor's degree is not generally required to become a registered nurse. This determination is based on the findings of the Department of Labor as to the educational preparation required for most nurses published in the Occupational Outlook Handbook (1995) and the Dictionary of Occupational Titles (1991). Some have criticized the INS because many employers have dropped the requirement for a bachelors degree precisely because of the severe shortage of nurses and not because the ideal nurse does not need such a degree. They argue that if the point of the H-1B visa is to help employers find qualified workers where there may be a shortage, then the INS policy totally thwarts the intention of Congress.

The INS does acknowledge, however, that there are areas of nursing where the specific duties are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Late in 2002, the INS issued a field memorandum that spelled out for the first time when H-1B visas are appropriate for nurses.

The INS memorandum made it clear that normal RN positions will not qualify for H-1B visas unless the state where the nurse seeks a license requires a bachelor's degree. Currently, only North Dakota requires a bachelor's degree for RNs. The INS did, however, list a number of positions that might qualify for an H-1B visa and the new guidance will hopefully lead to greater consistency in reviewing H-1B petitions.

## General Requirements

In order to qualify for an H-1B visa, an employer of a nurse must show the following:

1. a bachelor's or higher degree (or its equivalent) is normally the minimum requirement for entry into the position;
2. the degree requirement is common to the industry for parallel nursing positions (i.e., employers in the same industry require their employees to hold the degree when they are employed in the same or a similar position);
3. the employer normally requires a degree or its equivalent for the position or the nature of the position's duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree (or its equivalent).

Employers who can meet these requirements and can show they are paying the prevailing wage for the job can apply for an H-1B visa.

## Advance Practice Registered Nurses

The INS also discusses specific nurse positions. First, advance practice registered nurses (APRNs) will generally qualify for H-1B visas because these are advanced level positions requiring more education and training than the typical RN. An employer may require that the prospective employees hold advanced practice certification as one of the following: clinical nurse specialist (CNS), certified registered nurse anesthetist (CRNA), certified nurse-midwife (CNM), or certified nurse practitioner (APRN-certified). If the APRN position also requires that the employee be certified in that practice, then the nurse will be required to possess an RN, at least a Bachelor of Science in Nursing (BSN), and some additional graduate level education.

The INS lists the following positions that will normally qualify for an H-1B visa:

- Clinical Nurse Specialists (CNS): Acute Care, Adult, Critical Care, Gerontological, Family, Hospice and Palliative Care, Neonatal, Pediatric, Psychiatric and Mental Health-Adult, Psychiatric and Mental Health-Child, and Women's Health
- Nurse Practitioner (NP): Acute Care, Adult, Family, Gerontological, Pediatric, Psychiatric & Mental Health, Neonatal, and Women's Health.
- Certified Registered Nurse Anesthetist (CRNA); and
- Certified Nurse-Midwife (CNM).

## Administrative Positions

The INS will also approve H-1B visas for certain administrative nurse positions. According to the INS memorandum, "upper level nurse managers" in hospital administration positions may work for H-1B visas since these positions usually require bachelor's degrees. Nursing Services Administrators should work since these positions involve supervisory functions and they typically require a graduate degree in nursing or health administration.

## States that Require Bachelors Degrees

As noted above, the INS will consider an H-1B visa to be appropriate for any RN if the state where the nurse's position is requires a bachelor's degree. Right now only North Dakota has such a requirement. This raises the intriguing possibility of making North Dakota a gateway for employers seeking to bring nurses to the US quickly. Two possible scenarios come to mind:

1. A nurse contractor establishes an office in North Dakota and petitions for the nurse to enter North Dakota for their initial orientation with the contractor employer. The employer then files for an I-140 immigrant visa petition and concurrently files for an I-485 adjustment of status petition and employment authorization document request. After the employment document is approved, the nurse could then move to a different state.
2. North Dakota health care facilities and employers can take advantage of this loophole and have easy access to foreign nurses. They can then take advantage of this unique market position and potentially spin off their own staffing companies or cut deals with existing staffing companies to contract their nurse employees to health care facilities around the country using the I-140/I-485 process noted above.

## Specialized Nurse Positions

Aside from the Advanced Practice Registered Nurses noted above, nurses in certain specialized areas may file for H-1Bs. The INS specifically cites critical care and peri-operative (operating room) nurses as two examples of positions requiring a higher degree of knowledge and skill than a typical RN or staff nurse position. The INS indicates that passing a certification examination for a particular type of position is an important indicator. Examples of these types of certification examinations are school health, occupational health, rehabilitation nursing, emergency room nursing, critical care, operating room, oncology and pediatrics.

Such nurses should meet the general requirements noted above. Evidence to show these requirements could include affidavits from independent experts or other means showing that the job duties are so specialized and complex that a bachelor's or higher degree is appropriate. The INS notes that these cases will be adjudicated on a case-by-case basis so the outcome of such applications is far from certain.

## **TN-1 Visa**

TN-1 visas are available under the North American Free Trade Agreement ("NAFTA") to Canadian and Mexican citizens for a limited group of specialty occupations. Although not uniformly recognized as a specialty occupation for H-1B purposes, registered nurses were specifically included as a listed profession for which TN visas could be used and any registered nurse position can potentially qualify.

Under NAFTA, the applicant must possess the required credentials to be considered a professional under the TN category. Registered nurses must demonstrate eligibility by providing a provincial or state license or Licenciatura degree. However, in order to be admitted the registered nurse must present a permanent state license, a temporary state license, or other temporary authorization to work as a registered nurse, issued by the state nursing board in the state of intended employment.

Once admitted, a worker is granted an initial stay of one year. Thereafter, a TN professional may seek extensions of stay in one year increments. There is currently no limit on the number of extensions that may be granted.

Canadian nurses applying for TN visas can simply bring the required documentation to a port of entry and enter right away after being inspected by an INS examiner. A nurse can extend his or her status by mail with the INS Nebraska Service Center or by leaving and reentering with the required documents through a port of entry.

Mexican nurses, however, have additional requirements under the TN rules. Their process resembles the H-1B process. A Labor Condition Application must be submitted to the US Department of Labor and a I-129 Non-Immigrant Visa Application must be submitted to the INS Nebraska Service Center. After the INS approves the application, the nurse would apply for a visa at a US consulate in Mexico.

Note that unlike H-1B visas, TN visa holders are supposed to be able to demonstrate an intention to leave the US when they complete their TN stay. So nurses who apply for permanent residency while in the US must be very careful about traveling outside the US or applying for a TN extension after a green card application has been submitted.

### **H-1C Visas**

Late in 1999, Congress passed the Nursing Relief for Disadvantaged Areas Act, which calls for the creation of a new H-1C visa for nurses going to work for up to three years in health professional shortage areas. Up to 500 nurses per year can get the visa, but each state is limited to 25 H-1C nurses a year. Under the law, facilities interested in sponsoring nurses for H-1C visas must submit documentation containing a number of attestations regarding the employment of H-1C nurses.

As with most immigration laws, the statute itself provided very little guidance on how the law would be applied, leaving it to the INS (and in most employment visa cases the Department of Labor as well) to develop regulations. The regulations for the H-1C program were released by the Department of Labor last summer, and became effective in September 2000. While the regulation is currently effective, because it was released as an interim regulation, parts of it could change after the Department of Labor reviews the public comments that it received in response. The INS released its regulations in June 2001.

One of the most surprising elements of the Labor Department's regulations is a DOL finding that based on the restrictive definition of "facility" Congress put in the statute, only fourteen hospitals in the country could be initially determined to qualify to apply for H-1C visas. These facilities are:

1. Beaumont Regional Medical Center, Beaumont, TX
2. Beverly Hospital, Montebello, CA
3. Doctors Medical Center, Modesto, CA
4. Elizabeth General Medical Center, Elizabeth, NJ
5. Fairview Park Hospital, Dublin, GA
6. Lutheran Medical Center, St. Louis, MO
7. McAllen Medical Center, McAllen, TX

8. Mercy Medical Center, Baltimore, MD
9. Mercy Regional Medical Center, Laredo, TX
10. Peninsula Hospital Center, Far Rockaway, NY
11. Southeastern Regional Medical Center, Lumberton, NC
12. Southwest General Hospital, San Antonio, TX
13. St. Bernard Hospital, Chicago, IL
14. Valley Baptist Medical Center, Harlingen, TX

Note, however, that there are many more hospitals across the country that can potentially qualify for H-1C visas.

The attestation process is being administered by the Employment and Training Administration at the Department of Labor. Enforcement of the attestations is being overseen by the Employment Standards Administration's Wages and Hours Division.

The 1999 law is very similar to a 1989 law that created the H-1A visa for nurses. That visa category expired several years ago after unsuccessful efforts to extend its life. The key differences between the two programs are that a much smaller number of H-1C visas have been allocated and that the facility where the nurse will work must be in a health professional shortage area. There are also new requirements which limit a facility's dependence on H-1C nurses (something that is hard to imagine given that only 500 H-1C nurses permitted into the country each year, with no more than 25 allowed to work in a single state).

A qualifying hospital will meet four requirements:

1. The hospital must be located in a Health Professional Shortage Area. You can find out which areas are HPSAs online at <http://www.bphc.hrsa.gov/databases/newhpsa/newhpsa.cfm>
2. the facility must have at least 190 acute care beds
3. At least 35% of the facility's acute care inpatient days must be reimbursed by Medicare
4. At least 28% of the facility's acute inpatient days must be reimbursed by Medicaid

The Department of Labor has created a new attestation form called the ETA 9081 that is submitted as part of the H-1C application process. On the form, the facility must attest to the following:

1. That it is a qualifying facility. If the ETA 9081 is the first one being filed by a facility, then the form must be accompanied by copies of the pages from the paperwork filed with the Department of Health and Human Services showing the number of acute care beds and the percentages of Medicaid and Medicare reimbursed acute care inpatient days. A copy of this paperwork must also be kept in a public access file.
2. That the employment of H-1C nurses will not adversely affect the wages or working conditions of similarly employed nurses.
3. That the facility will pay the H-1C nurse the facility wage rate.

4. That the facility has taken and is taking timely and significant steps to recruit and retain nurses in order to reduce dependence on immigrant nurses. At least two such steps must be taken unless it can show that the second step is not reasonable.

Documentation of these steps needs to be included in the facility's public access file for H-1C nurse petitions. Steps which may be taken can include:

a. Operating a training program for registered nurses at the facility or financing or providing participation in a training program elsewhere.

b. Providing career development programs and other methods of facilitating health care workers to become RNs.

c. Paying registered nurses wages at a rate at least 5% higher than the prevailing wage for the area.

d. Providing reasonable opportunities for meaningful salary advancement by registered nurses.

e. Any other steps that would be considered significant efforts to recruit and retain nurses.

5. That there is not a strike or lockout at the facility, that the employment of H-1C nurses is not intended or designed to influence an election for a union representative at the facility and that the facility did not lay off and will not lay off an RN within the 90 day period and 90 day period after the date of filing an H-1C petition.

6. That the employer will notify other workers and give a copy of the attestation to every nurse employed at the facility within 30 days of filing. E-mail attachments are acceptable.

7. That no more than 33% of the nurses employed by the facility will be H-1C non-immigrants.

8. That the facility will not authorize H-1C non-immigrants to work at a worksite not under its control and will not transfer an H-1C nurse from one worksite to another.

The paperwork must also be accompanied by a filing fee. After the Attestation is approved by the Labor Department and used in support of an H-1C petition approved by the INS, the employer is required to send a copy of the H-1C petition and INS approval to the Labor Department. Also, as noted above, the employer must create a public access file that includes the Attestation and its supporting documentation. The file must be produced for any interested party within 72 hours upon written or oral request.

Under the INS regulations, there are three primary eligibility requirements for foreign nurses who wish to work in the US on an H-1C visa:

- They must have an unrestricted license to work as a professional nurse in the country where they received their nursing training, or have received that training in the US;
- They must pass an examination approved by the Department of Health and Human Services or have a license to work as a professional nurse in the state where they will work; and

- They must be eligible to work as a registered nurse under both the laws of the state where they will work and the regulations of the facility where they will work.

Currently, the examination is that offered by the Commission on Graduates of Foreign Nursing Schools (CGFNS). CGFNS certifies that the foreign nurse's training and license are equivalent to a similarly situated US nurse, that all their documents are authentic, that the foreign nurse has an unrestricted license, that the foreign nurse is sufficiently proficient in written and spoken English, and that the foreign nurse has in fact passed a state licensing exam. Questions about the exam may be directed to CGFNS through its website at <http://www.cgfns.org>.

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### 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.*

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Q - I have been working in USA since April 2000 on H1B (Valid until March 2003) and my family is also here on H4. I had applied for Canadian immigration and that is now approved. I need to enter Canada before 12th May 2003 as per the regulation of Canadian immigration. If I enter Canada by road with my family in the next 2 to 6 months, so as to satisfy the entry condition before the expiry, can I stay only for a day or two and then return to USA to continue working? Do I have to inform INS about my having obtained PR status for Canada? PS: My green Card for USA is under process and I don't wish to go permanently to Canada unless and until I get the decision on my green card.

A - Entering Canada to obtain your landed immigrant status will not affect your H-1B visa. You do not need to inform the INS about your landed immigrant status. Your green card application also should not be affected. Keep in mind, however, that while being a permanent resident of Canada will not prevent you from getting a green card, if you spend a lot of time in Canada and not in the US after you get the green card, then you risk

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Q - I was born in the US. My father was a diplomat on an A visa. I have heard that I am not a US citizen. Is this true?

A - Children of accredited diplomatic officials are not considered citizens at birth.

The key is whether the parent and the entire family had diplomatic immunity. Most A visas do, but you would actually need to check the State Department Blue List for the time when your parent was working in the US. There are some diplomatic officials who do not receive immunity and their children are citizens at birth. Children of the following people are typically considered citizens at birth:

1. persons on the State Department's White List (people on this list may get diplomatic immunity but their children do not)
2. consular officers and members of their staffs (there are exceptions here)
3. employees of foreign missions accredited to the UN or other international organizations if they are not listed on the Blue List or UN Privileges and Immunities List
4. Officers and employees of the UN or other international organizations if they are not listed on the Blue List or UN Privileges and Immunities List
5. Diplomatic officials not on the Blue List because they have not been officially accredited yet or because their accreditation was terminated.

To find out for sure, we normally need to write to the State Department for an official opinion.

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Q - I'm a US citizen, but my question concerns my son. Some 25 years ago while I was in the US army, stationed in Germany a German national had a child by me. We never married and I left Germany. She married another US army personnel and moved to the states with my son and has lived there ever since. I lost contact with them some 20 years ago and recently found my son. He told me that he isn't a US citizen. My question is: Since he is my son, which can be proven by DNA, would he be a US citizen?

A - Your son may be able to claim citizenship if you can show you agreed in writing to support the child until age 18 and while the child was under 18, you acknowledged paternity. There are additional rules, but if that threshold requirement cannot be met, then you will not be able to confer citizenship on your son (though a green card is possible).

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Q - I am currently working in the US on an L1A visa. The company I work for has applied for a green card on my behalf. I am considering accepting a position with another company in an executive capacity (Director of New Media). I realize I would have to abandon the current application and transfer to an H1 visa which would leave me about 2.5 years of H status left. Is the process for green card applicants the same for executives? Will the 2.5 years left in H status be sufficient to move through the green card process far enough to allow me to stay if H status expires? Are there other options for me (i.e. TN status)?

A - Actually, from an immigration point of view you really want to consider carefully making this move. You probably are going through a fast track green card process that mirrors the L-1 application process pretty closely. If you move, you'll have to go through a labor certification which will require your new employer to document that they are unable to find a qualified American immediately available for the job. That's not always easy for executives. This also means an extra year for the green card

process. Definitely discuss this with your lawyer (not your company's) to see whether you may be at a stage in processing that will allow you to leave and not abandon the green card. Otherwise, you probably are okay to switch as long as the next employer starts the green card process right away. If a labor certification is filed before you begin your sixth year in L or H status, then you can extend the H-1B visa in order to complete green card processing.

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Q - Is there any limit to how many times (and how often) someone can visit the U.S. using the Visa Waiver Program? Also, can someone apply for the K engagement visa while they are here under the Visa Waiver Program?

A - There are no limits on how many times you can enter using the Visa Waiver Program. However, a border officer always has the discretion to deny you entry if they suspect that you have intentions to remain permanently in the US, are working illegally here, or are otherwise not going to comply with the rules. Leaving and reentering the US too frequently and with very short gaps between leaving and reentering will potentially draw suspicions.

As for applying for the K-1 visa while here in the US, that should not be a problem as long as you leave the US in a timely manner. In fact, it is the more appropriate to do this than to enter on the Visa Waiver and then marry and apply for adjustment while on that same trip.

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#### 4. BORDER NEWS

Immigration officials are moving rapidly to meet a congressionally imposed deadline for a new identification system for use at the most porous border entry points. The system will use ID cards encrypted with digital photographs, signatures, fingerprints and other information issued by the State Department and INS.

"Overnight it will be the largest biometric-based border clearance system ever attempted," said Richard Norton of the International Biometric Industry Association.

The border agency has been testing 30 card-reading machines for two months at three airports and at three crossing points, in Arizona, Texas and California.

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A bill put forward by Arizona House Speaker Jake Flake would create a volunteer citizens corps to patrol the Mexican border to help stem the tide of illegal immigration and drug trafficking, and to assist with homeland security. The group would not have police powers or receive compensation. They would be able to carry firearms, as allowed by state law. Vigilante groups have been gathering near the border in recent months.

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This week US Interior Secretary Gale Norton expressed reservations about the Border Patrol's plan to erect a tall fence along 249 miles of Southern Arizona. Norton said she'd prefer a low vehicle barrier that would keep cars from crossing into the

United States from Mexico, but wouldn't prevent wildlife from migrating in their usual patterns.

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The Bush administration is seeking \$6 million to shore up patrols of federal lands along the border. The increase is small considering the Interior Department's \$10.7 billion budget, but it could mean as many as 60 new law enforcement officers in national parks and on federal lands.

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The investigation of a May 20 shooting at a US Border Patrol vehicle from what appeared to be a Mexican military vehicle has been closed with no arrests made, according to a FBI spokesman. The Justice Department and Mexican officials had no leads and no possible suspects. The rear window of the Border Patrol vehicle was shattered by a bullet, but there were no casualties.

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## 5. NEWS FROM THE COURTS

Shqutaj v. INS, No. 02-1909 (3rd Cir. Feb. 4, 2003)

In this case, Gjoke Shqutaj, an Albanian national, appealed to the Third Circuit Court of Appeals an exclusion order handed down by the Board of Immigration Appeals affirming an Immigration Judge's denial of Mr. Shqutaj's application for asylum and withholding of deportation.

Mr. Shqutaj's father was imprisoned years ago for assisting those attempting to flee Albania's communist government. Mr. Shqutaj claims that during that period he was prevented from continuing his education past the eighth grade and that he was forced to do physical labor for fifteen years from 1975 to 1990. His brother died in 1990 and Mr. Shqutaj believes that the police were lying when they stated that his brother was killed in a work accident.

Mr. Shqutaj claims that during the 1990s he was an active member of the Democratic Party and the Association of the Formerly Politically Persecuted. He claims he was arrested twice in 1996 for participating in a roadblock that was part of a political demonstration and that while in custody of the police he was interrogated, threatened, grabbed by the throat and detained for three days in jail. After he was released, he was again arrested and suffered further abuse. After the second release, Shqutaj was convinced that he would soon be imprisoned or killed and he then fled the country. His wife remains in Albania and claims that the police have since inquired about his whereabouts.

Upon arriving in the US in 1996, Shqutaj was detained and charged with attempting to come into the US by fraud and for being an immigrant not in possession of a valid entry document. The Immigration Judge through out the fraud charge and Shqutaj conceded the latter one. He then presented an application for asylum and withholding of deportation.

The Immigration Judge ruled that Shqutaj did not prove his asylum claim and the BIA affirmed the ruling.

In its ruling, the Third Circuit noted the burden to prove a well-founded fear of persecution lies with the applicant who must demonstrate that he or she has a genuine fear of persecution, and that a reasonable person in the same circumstances would similarly fear persecution if returned to the native country in question. An applicant who establishes past persecution, however, benefits from a presumption that he or she has a well-founded fear of future persecution.

According to the court, as the resolution of these factual determinations has been delegated to the BIA, the appellate court's review is circumscribed, limited to ensuring that any findings are supported by substantial evidence. The court may reverse only where the evidence compels a conclusion contrary to that of the BIA.

The Third Circuit noted in its decision here that the applicant essentially restated the arguments presented in its appeal to the BIA.

In this case, the Immigration Judge determined that the arrest for participating in the road block was proper and that while the police's behavior may have been harsh and excessive, it did not amount to enough to justify an asylum claim.

The Third Circuit further noted that although Shqutaj claims that he feared that the police were going to kill him after he was released from custody for the second time, there is no evidence to lend any objective credence to Shqutaj's fears. An applicant's subjective fear of persecution must be "'supported by objective evidence that persecution is a reasonable possibility'"

The court also found that Shqutaj had not established any prior harassing or persecuting treatment against him because of his father's political activities or otherwise. Shqutaj's argument with regard to the supposed persecution against him because of his family was based on two claims: (1) that he and his family were denied economic and educational opportunities under the previous communist regime, and (2) that the police officers who arrested him made threatening references to his father's incarceration decades earlier. The court agreed with the Immigration Judge that neither of these claims could plausibly require the granting of asylum; Shqutaj has presented absolutely no evidence of any unique mistreatment or hardship prior to being properly arrested for his participation in the illegal roadblock.

The appeal was denied. The case can be found online at the ILW.com web site at <http://www.ilw.com/lawyers/immigdaily/cases/2003,0206-Shqutaj.pdf>.

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## 6. GOVERNMENT PROCESSING TIMES

These are not official INS times, nor are they endorsed by the Central Office.  
Source: [American Immigration Lawyers Association](#)

Texas Service Center Processing Time Report (1/30/03)

Texas Service Center  
 Processing Time Report  
 January 30, 2003

Form	We are Processing cases with these receipt notice dates:
I-90 to replace lost, damaged or destroyed I-551	4/10/02
I-90 to renew expiring I-551	n/a
I-102 for replacement/initial nonimmigrant arrival/departure form	8/6/02
I-129 for H1B classification	8/30/02
I-129 for H2A classification	current
I-129 for H2B classification	12/11/02
I-129 for H3 classification	1/7/03
I-129 for L classification	1/7/03
I-129 for Blanket L petition	1/7/03
I-129 for O classification	12/5/02
I-129 for P classification	1/13/03
I-129 for Q or R classification	Q Current - R 9/04/2002
I-129 for TN classification	n/a
I-129F (fiancée)	10/11/02
I-129 For E classification	9/3/02
I-130 for Spouse, Parent or Child of US Citizen	6/8/01
I-130 for Spouse of Lawful Permanent Resident	4/3/98
I-130 for Other Relative	4/3/98
I-131 for Advance Parole	12/4/02
I-131 for Advance Parole for HRIFA principal applicant	n/a
I-131 for Reentry Permit	n/a
I-131 for Refugee Travel Document	n/a
I-140 A (extraordinary ability)	6/17/02
I-140 B (outstanding professor or researcher)	6/17/02
I-140 C (multinational executive or manager)	6/17/02

I-140 D (professional holding adv. degree/alien of exceptional ability)	8/29/02
I-140 E (skilled worker or professional)	10/1/02
I-140 I (National Interest Waiver)	7/18/02
I-140 G (other worker 3RD PREF)	10/1/02
I-212 permission to reapply for admission after deportation/removal	n/a
I-360 petition for Amerasian, widow(er), or Special Immigrant	8/1/01
I-485 Asylum-based	n/a
I-485 Refugee-based	n/a
I-485 Employment-based	11/1/00
I-485 Haitian Refugee Immigration Fairness Act (HRIFA)-based	n/a
I-526 Immigrant Petition by Alien Entrepreneur	11/15/02
I-539 for extension of stay for F or M non-immigrant	12/26/02
I-539 for extension of stay for J non-immigrant	n/a
I-539 for extension of stay for L or H non-immigrant	12/26/02
I-539 for extension of stay for other non-immigrant	12/26/02
I-539 to change nonimmigrant classification to F or M	12/26/02
I-539 to change nonimmigrant classification to J	12/26/02
I-539 to change nonimmigrant classification to L or H	12/26/02
I-539 to change to other nonimmigrant classification	12/26/02
I-612 waiver of foreign residence requirement	9/17/02
I-730 Refugee/Asylee Relative Petition	n/a
I-751 Petition to Remove Conditions on Residence	9/13/02
I-765 for initial asylee or asylum applicant authorization C-8	11/8/02
I-765 for employment authorization associated with Hurricane Mitch TPS	7/8/02
I-765 for employment authorization associated with El Salvador TPS	8/1/02
I-765 for employment authorization while I-485 is pending C-9	10/3/02
I-765 for all other employment authorization	10/1/02
I-817 Application for Family Unity Benefits	12/29/98
I-821 for El Salvador	4/13/01
I-821 for Hurricane Mitch countries	8/17/99

I-824 Application for Action on an Approved Application or Petition	8/8/02
I-829 Petition by Entrepreneur to Remove Conditions	3/22/99
I-914 Application for T Non-Immigrant	n/a
Cases are worked concurrently with I-129's if filed.	

California Service Center Processing Time Report (1/15/03)

California Service Center Processing Time Report 01/15/03	
Form	We are Processing cases with these receipt notice dates:
I-90 to replace lost, damaged or destroyed I-551	5/6/2002
I-90 to renew expiring I-551	5/6/2002
I-102 for replacement/initial nonimmigrant arrival/departure form	1/3/2002
I-129 for H1B classification	7/15/2002
I-129 for H2A classification	1/22/2003
I-129 for H2B classification	9/30/2002
I-129 for H3 classification	10/7/2002
I-129 for E classification	7/26/2002
I-129 for L classification	12/7/2002
I-129 for Blanket L petition	12/7/2003
I-129 for O classification	7/1/2002
I-129 for P classification	6/28/2002
I-129 for Q classification	6/24/2002
I-129 for R classification	5/22/2002
I-129 for TN classification	11/19/2002
I-129F (fiancée)	
I-130 for spouse, parent, or child (under 21) of a United States citizen	3/26/2002
I-130 for Unmarried son/daughter (over 21) of a United States citizen	10/6/1999
I-130 for Spouse/Child of a lawful permanent resident	1/2/1998
I-130 for Unmarried son/daughter (over 21) of a lawful permanent resident	4/6/1998

I-130 for Married Son/daughter of a United States citizen	10/6/1998
I-130 for Brother/Sister of United States citizen	4/1/1998
I-131 for Advance Parole	1/10/2003
I-131 for Advance Parole for HRIFA principal applicant	
I-131 for Reentry Permit	
I-131 for Refugee Travel Document	
I-140 A (extraordinary ability)	9/27/2002
I-140 B (outstanding professor or researcher)	8/12/2002
I-140 C (multinational executive or manager)	10/16/2002
I-140 D (professional holding adv. degree/alien of exceptional ability)	10/18/2002
I-140 E (skilled worker or professional)	10/4/2002
I-140 I (National Interest Waiver)	12/27/2002
I-140 G (other worker)	12/3/2002
I-212 permission to reapply for admission after deportation/removal	1/19/2001
I-360 petition for Amerasian, widow(er), or Special Immigrant	9/25/2002
I-485 Asylum-based	
I-485 Refugee-based	
I-485 Employment-based	11/16/2001
I-485 Haitian Refugee Immigration Fairness Act (HRIFA)-based	
I-539 for extension of stay for F or M non-immigrant	12/3/2002
I-539 for extension of stay for J non-immigrant	12/6/2002
I-539 for extension of stay for L or H non-immigrant	12/6/2002
I-539 for extension of stay for other non-immigrant	12/3/2002
I-539 to change nonimmigrant classification to F or M	12/6/2002
I-539 to change nonimmigrant classification to J	12/6/2002
I-539 to change nonimmigrant classification to L or H	12/4/2002
I-539 to change to other nonimmigrant classification	12/4/2002
I-612 waiver of foreign residence requirement	7/3/2002

I-730 Refugee/Asylee Relative Petition	
I-751 Petition to Remove Conditions on Residence	7/10/2002
I-765 for initial asylee or asylum applicant authorization	1/6/2003
I-765 for employment authorization associated with Hurricane Mitch TPS	1/6/2003
I-765 for employment authorization associated with El Salvador TPS	9/9/2002
I-765 for employment authorization while I-485 is pending	9/9/2002
I-765 for all other employment authorization	8/14/2002
I-817 Application for Family Unity Benefits	6/14/2002
I-821 for El Salvador	5/18/2001
I-821 for Hurricane Mitch countries	5/18/2001
I-824 Application for Action on an Approved Application or Petition	3/22/2002
I-829 Petition by Entrepreneur to Remove Conditions	10/23/2000
I-914 Application for T Non-Immigrant	

**MSC Aging Report  
January 30, 2003**

"Processing Date": Tells you the date of cases that have moved through the process and are now going to an INS Officer for analysis and decision		
FORM		PROCESSING DATE
I-90	Application to Replace or Renew Permanent Resident Card	
I-102	Application for Replacement/Initial Nonimmigrant Arrival/Departure Record	23-Dec-02
I-129	Petition for A Nonimmigrant Worker	
I-129S	Nonimmigrant Petition Based on Blanket L Petition	
I-129F	Fiancé(e)	9-Oct-02
I-130	Petition for Immediate Relative	
I-130	Other	
I-131	Application for Travel Document	11-Nov-02
I-140	Immigrant Petition for Alien Worker	
I-212	Application for Permission to Reapply for Admission to the US After Deportation or Removal	13-Nov-02
I-290B	Notice of Appeal to the Administration Appeals Unit (AAU)	9-Oct-02

I-360	Petition for Widowed/Special Immigration	
I-485	Application to Register Permanent Residence or to Adjust Status	8-Aug-02
I-485	Asylee	
I-526	Immigrant Petition By Alien Entrepreneur	
I-539	Application to Extend/Change Nonimmigrant Status	5-Sep-02
I-601	Application for Waiver of Grounds of Excludability	22-Nov-02
I-687	*	
I-690	Application for Waiver of Excludability	20-Dec-02
I-698	Application to Adjust Status From Temporary to Permanent Resident	
I-730	Refugee/Asylee Relative Petition	
I-751	Petition to Remove the Conditions on Residence	
I-765	Employment Authorization (c ) 8	
I-765	Employment Authorization ( c ) 9	
I-765	Employment Authorization Other	17-Dec-02
I-817	Application for Family Unity Benefits	2-Aug-02
I-821	Application for Temporary Protected Status	
I-824	Application for Action on an Approved Application or Petition	21-Nov-02
I-829	Petition by Entrepreneur to Remove Conditions	

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## 7. NEWS BYTES

The President intends to designate Eduardo Aguirre, Jr. of Texas, to be Acting Director of the Bureau of Citizenship and Immigration Service at the Department of Homeland Security. He is currently the Vice Chairman and First Vice President of the Export-Import Bank of the United States. Mr. Aguirre previously worked for Bank of America for 24 years. Mr. Aguirre was named "One of the 100 most Influential Hispanics in the Nation" by Hispanic Business Magazine for three consecutive years. He is a graduate of Louisiana State University.

We now know who will oversee the new immigration services agency when the INS is split up and merged into the Department of Homeland Security later this year. President Bush has tapped Eduardo Aguirre, Jr. of Texas to be the Acting Director of the Bureau of Citizenship and Immigration Service. Mr. Aguirre is the Vice Chairman and First Vice President of the Export-Import Bank of the United States. He previously worked for Bank of America for 24 years. Hispanic Business Magazine named Mr. Aguirre one of the nation's 100 most influential Hispanics for three consecutive years.

Aguirre is an immigrant himself who arrived in the US as a child from his native Cuba in the early 1960s.

\* \* \* \*

The INS now estimates that there are seven million illegal immigrants in the United States. The agency believes the number of illegal immigrants is growing by 350,000 people each year. California is the home to the largest amount - well over two million. Texas is home to another million. About two-thirds of the illegal immigrants are from Mexico. Other significant undocumented populations include nationals from El Salvador, Guatemala, Colombia, Honduras, China and Ecuador.

\* \* \*

The State Department has announced that it will continue its Interim Student Exchange Authentication System (ISEAS) for the time being. The announcement is a response to the recent INS announcement that it was postponing implementation of the new SEVIS system for two weeks beyond the anticipated January 30, 2003 start date. The ISEAS system requires schools to post online information on people that have been issued I-20s and DS-2019 forms for issuance of F-1 and J-1 visas.

\* \* \* \*

The United States will accept up to 12,000 Somali Bantu refugees beginning in the spring. The refugees are descendants of slaves from Mozambique an southern Africa and have been languishing in Kenyan refugee camps on the Somali Kenyan border for much of the past ten years. They will be placed in extended family groups in up to fifty cities and towns across the United States throughout 2003 and 2004

Upon arrival in the U.S., each Bantu family will be assigned to one of the ten voluntary agencies under cooperative agreement with the Department of State to provide reception and placement services. These agencies are Church World Service, Episcopal Migration Ministries, Ethiopian Community Development Council, Hebrew Immigrant Aid Society, Iowa Bureau of Refugee Programs, Immigration and Refugee Services of America, International Rescue Committee, Lutheran Immigration and Refugee Services, United States Conference of Catholic Bishops, and World Relief Refugee Services. They will assist with basic immediate needs such as housing, furniture, clothing, food, and referrals to employment, ESL, and other services. In addition, the U.S. Department of Health and Human Services Office of Refugee Resettlement provides funding to the states and voluntary agencies for longer-term programs for refugees.

\* \* \* \*

The California Service Center is reporting that it now has IBIS security checks down to a 15 day turnaround time.

\* \* \* \*

Last week we reported on the indictment of two contract workers at the California Service Center accused of shredding tens of thousands of document filed by immigrants seeking visa benefits. This week, the two workers pleaded not guilty to the charges and demanded a jury trial.

\* \* \*

Fujie Ohata, the INS' Associate Commissioner for Service Center Operations, has to memoranda to INS service centers explaining which types of L-1B visa applicants qualify as managers and specialized knowledge employees.

Ohata notes that a 1994 memorandum regarding specialized knowledge employees written by James Puleo still is in force and examiners must follow it. The 1994 memo noted that the alien should possess a type of specialized knowledge that is different from that generally found in the particular industry and that the knowledge need not be proprietary or unique. It might be enough if the alien has specialized knowledge of the company product if the knowledge is noteworthy or uncommon. Where the alien has knowledge of the company's processes and procedures, the knowledge must be advanced. The knowledge does not, however, have to be narrowly held throughout the company. And no test of the US labor market to show a lack of specialized knowledge in US workers is needed. Only an examination of the knowledge possessed by the worker is needed.

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The INS' California Service Center has released data regarding H-1B approval rates. Interestingly, people who used the Premium Processing program were actually approved in higher numbers than those who do not. This is contrary to the conventional wisdom that Premium Processing examiners apply a tougher standard than regular examiners. In the latest month available. For regular cases filed in September 2002, the latest month for which statistics are available, 49.61% of cases were initially approved, 21.11% were denied and 29.28% were issued Requests for Evidence. For Premium Processing cases, 77.96% were approved, 6.11% were denied and 14.79% were issued Requests for Evidence. The difference in the approval rate was similar for the two prior months as well.

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## 8. INTERNATIONAL ROUNDUP

### Foreigners Will Be Limited to 20% of Saudi Workforce

In an effort to ease rising unemployment rates for native Saudis, the government of Saudi Arabia has announced plans to limit the number of expatriate workers and their dependents in the Kingdom to 20 percent. The decision was reached by the Manpower Council, chaired by Interior Minister Prince Naif, after analyzing the results of a recent labor study.

Council Secretary-General Abdul Wahid Al-Humaid also released plans to put a 10 percent cap on workers from any single country among the total number of expatriates. The government plans to reduce the number of expatriates to the 20 percent rate within 10 years, with a review of the policy every two years, the secretary-general said. Up to three million foreigners living and working in Saudi Arabia would be affected by the quota.

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### U.K. Group Says Working Asylum Seekers Would Benefit Economy

Research done by the London Development Agency suggests that a one percent increase in the number of refugees working could help expand London's job market by twice that amount. Experts say the economy is missing the opportunity to tap into the skills of asylum seekers living in the capital because of restrictions preventing them from work. Asylum seekers are currently banned from working until their cases are decided.

The Home Office's own research suggests there could be a "multiplier effect" benefiting the economy if more refugees had jobs. The agency's prediction is also in line with previous research that shows new migrants fill job market gaps and tend to contribute more than they get back from the state.

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### Stranded Migrants Repatriated In Bangladesh

A group of 213 migrants on the Indo-Bangladesh border had been stranded for several days after being denied entry by Indian authorities. India said the migrant's documents proved they were Bangladeshi, but Bangladesh insisted they were not its citizens but instead Muslims from India's West Bengal state who resemble Bangladeshis and speak the same language, Bengali.

Border guards traded gunfire twice during the six-day ordeal, while the men, women and children remained stranded on the Indian side of the border without food, water or shelter. No casualties were reported.

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### Overseas Filipinos Will Be Allowed To Vote

This week Philippine legislators finished drafting a bill that would allow millions of Filipinos to vote overseas. The idea has been hailed as a boost for democracy but criticized for its potential costs.

A joint committee of the House and Senate approved the draft, which then moved to the full chambers for a vote. The Senate has approved the bill. The House of Representatives was expected to pass it Friday, and officials said President Gloria Macapagal Arroyo would sign the bill into law.

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### Canadian Immigration Minister Pushes For National ID Card

Denis Codere, Canada's immigration minister, is pushing for a national identity card. Codere told the Commons committee on citizenship and immigration that citizens' ability to travel abroad will be based on the integrity of identification, and he warned that the days of entering the United States with a driver's permit would soon be over.

Critics point to the use of passports, saying citizens do not need another piece of ID, and another bureaucracy to administer it.

Coderre said the card would protect privacy and help fight identity theft by including fingerprints and other information that could be collected in a central database.

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#### 9. SSHD'S VISALAW.COM WEB SITE SELECTED AS NATION'S BEST

Siskind, Susser, Haas & Devine, the publisher of Siskind's Immigration Bulletin and the producer of the Visalaw.com web site has been selected as the recipient of the Platinum Award by *The Internet Marketing Attorney*, an eZine that ranks and reviews law firm web sites. The IMA 2003 awards select firms in three categories:

- large firms;
- small and mid-sized firms; and
- international firms

SSHD's site was selected as the best in the small and mid-sized category. However, the site scored as the highest for any of the three categories.

In its review of Visalaw.com, IMA had this to say:

"For many involved in law firm web site development, this is where it all started. With Greg Siskind and Visalaw.com. You would be hard-pressed to find anyone on the planet involved in either the practice of immigration law or law firm web sites that have not been to this site at some point in time. This is where immigration lawyers go to learn what immigration lawyers should know. This is the site that people point to as the best example of how a small firm used the Internet to become a "player". And this year, Visalaw finally succumbed to retiring the weakest component—a really drab design—and now has a site with look and functionality to compliment some of the most content-rich information available in a field of practice. This level of success does not come without a tremendous amount of time and energy (more than money), but they do not buy content from others or spend money getting the web site promoted—they succeed using their own credentials and person-power—a lesson for firms of all sizes and practices. Visalaw does not pay sites to post articles. People come here as the destination for information."

Greg Siskind, founding partner of SSHD, noted that the firm is very honored to receive the award. "When we started the web site nearly nine years ago, there were just a few other law firm web sites online and it was easy to get attention. But now with tens of thousands of other law firm web sites out there, to receive this kind of recognition is especially gratifying. The firm's lawyers and staff put a tremendous amount of effort into this site every day and we are elated that the work has been recognized."

The IMA rankings can be found online at <http://www.internetmarketingattorney.com/web2003.php>.

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#### 10. CONGRESSMAN CLAIMS INTERNING JAPANESE-AMERICANS JUSTIFIED

North Carolina Republican Congressman Howard Coble has drawn fire for suggesting that the internment of Japanese Americans during World War II was justified. Coble,

the newly appointed chairman of the House Judiciary Subcommittee on Crime, Terrorism and Homeland Security, made the statement during a radio program in response to a caller who suggested that Arab Americans should be confined to internment camps. Coble claimed that the internment was for the safety of the detainees.

"We were at war. [Japanese-Americans] were an endangered species. For many of these Japanese-Americans, it wasn't safe for them to be on the Street."

The remark drew immediate fire from a number of people. David Wu, the chairman of the Congressional Asian Pacific American Caucus noted that on the upcoming 60th anniversary of President Roosevelt's Executive Order 9066 authorizing the round up and internment of tens of thousands of Japanese Americans, it is important not to re-write history. Wu noted that Japanese Americans were not rounded up into internment camps for their own protection. "Japanese American, Arab American or otherwise, there is nothing to justify interning Americans because of their ancestry," said Wu in a publicly released statement. Wu, along with fellow Congressmen Mike Honda and Robert Mitsuie are demanding a meeting with Coble.

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## 11. TYSON CHICKEN ALIEN SMUGGLING TRIAL BEGINS

After nearly three years, the trial began in a criminal case alleging Tyson Foods participated in a multi-year conspiracy to smuggle Mexican workers to the US and supply them with false documents in order for the laborers to work in a Tyson plant in the southern United States. Tyson is the nation's largest meat producer and processor. This is the first time a company as large as Tyson has been indicted for charges of this nature and the government is hoping the case sends a message to employers across the country.

Prosecutors told jurors in their opening arguments that corporate greed led the company to support the scheme. According to prosecutors, Tyson flouted immigration rules by assisting the Mexican workers in obtaining phony documents such as Social Security cards and driver's licenses. Prosecutors also said the company switched from hiring the illegal workers directly and instead deliberately used temporary employment agencies to avoid having to avoid the INS' electronic employee eligibility database. The company is alleged to have known that the employment agencies generally supplied illegal workers.

Tyson defended its conduct and blamed "rogue employees" who operated without the knowledge of senior management at the company's Arkansas headquarters. The company noted that it voluntarily participates in the INS' pilot computer program and that it dismissed or disciplined the employees involved in the alleged scheme. "No senior executive forced any employee, directly or indirectly, to commit the crimes charged in this indictment," said Tom Green, a Tyson attorney.

For a criminal case of this nature against a company, prosecutors can seek a forfeiture claim. This type of claim allows the government to seize all profits that the company received as a result of the criminal actions. The government initially claimed that this amounted to \$130 million, but the government is believed to have

since reduced that figure. Neither the company nor prosecutors are publicly stating what that reduced amount actually is.

According to the December 2001 indictment, employees of Tyson arranged for 26 vehicles filled with Mexican workers to take the workers to Tyson plants in Tennessee, Virginia, North Carolina and Arkansas. Prosecutors claim that Tyson plants in Kentucky, Pennsylvania and Missouri were also seeking illegal Mexican workers.

One of the government's first witnesses was Benito Maldonado, a special agent with the INS. Maldonado told the jury that in 1997 he initially learned of the scheme when he met a man in Shelbyville, Tennessee who introduced him to a former Tyson employee who ran a grocery store with a Mexican clientele. The store's owner also provided false documents to Mexican immigrants. That store owner, Amador Anchondo-Rascon has pleaded guilty and is now a witness for the prosecution. The INS agent, acting undercover, entered into a partnership with Mr. Anchondo-Rascon to help illegal workers get work with a Tyson plant in North Carolina. Over two and a half years, Mr. Anchondo-Rascon worked with Maldonado and other government agents to connect 150 illegal workers with Tyson plants.

The government has more than 400 tapes it is including as evidence in the case. It also is getting cooperation from two employees that have already pleaded guilty. One other employee that had pleaded guilty, Jimmy Rowland, killed himself last April. Three other employees allegedly involved in the scheme have been placed on administrative leave and another has retired.

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## 12. NEW RULE REQUIRES CANADIAN AND BERMUDA PERMANENT RESIDENTS TO GET VISAS

This week the INS and State Department simultaneously released rules requiring that permanent residents of Canada and Bermuda must now present a passport and visa when seeking entry to the US. Current rules allow for such individuals to enter the US without a visa. The rule will go into effect on March 17, 2003.

The rule does not apply to citizens of either country. Furthermore, permanent residents of Canada or Bermuda who are citizens of visa waiver countries can still enter the country without a visa under the terms of the visa waiver program.

Security issues are at the heart of the new rule. According to the INS,

"In light of the terrorist attacks of September 11, 2001, the Service, in conjunction with the Department of State, has determined that it is in the public interest to reconsider the existing waiver for such aliens. Because the Department of State requires special clearance procedures for nationals of some countries that are beneficiaries of the waiver, the Department of State and the Service have determined that requiring a passport and visa for these aliens will provide a higher level of security for the United States. Current beneficiaries of the waiver include nationals from countries with high rates of documentary and immigration fraud and abuse and nationals from

countries with high nonimmigrant refusal rates. In many cases, documents presented by beneficiaries of the waiver do not meet current document security standards."

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### 13. INDICTMENTS HANDED DOWN IN CONSULATE BRIBERY CASE

Last week we reported that the State Department had shut down the US consulate in Nuevo Laredo in Mexico as a result of a bribery scandal. This week indictments were announced against various employees of the consulate.

Miguel Partida, a visa officer and a US citizen, was charged with conspiracy to commit visa fraud while working at the consulate. Partida was arrested in Laredo, Texas on Wednesday.

The prior week, three Mexicans were charged in the case as well. The defendants are Sergio Genaro Ochoa-Alarcon 31, Benjamin Antonio Ayala-Morales, 34 and Ramon Alberto Torres-Galvin, 34. The men worked as visa clerks at the US consulate. All are in custody.

According to the indictment against Partida, agents of the Diplomatic Security Service initiated an investigation last year into allegations that Consulate employees were involved in a scheme to provide visas and border crossing cards in exchange for money. Visas were apparently bought for around \$1500 without the required interviews and without a determination that the person was qualified for a visa.

The US consulate in Nuevo Laredo issued 100,000 visas last year, but federal authorities have refused to state how many visas were sold in the alleged scheme. Authorities did say, however, that they believe the scheme was directed by a woman in Mexico named Margarita Martinez Ramirez. Authorities have not yet located her.

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### 14. BUSH BUDGETS MORE MONEY FOR IMMIGRATION

The Bush Administration has announced its proposed budget for the 2004 fiscal year. The budget includes allocations for the new Department of Homeland Security which will include in 2004 the newly absorbed Immigration and Naturalization Service. As we have reported over the past year, the INS will be divided into two separate agencies within DHS - one an enforcement agency and one a services agency. The following are some of the funding initiatives highlighted by DHS for 2004:

- \$1.8 billion for Citizen and Immigration Services, an increase of \$143 million (8.6 percent) over the 2003 level, to support further improvements in application processing as well as the projected application volume.

- the Administration requested again \$500 million to fund an initiative to reduce backlogs for citizenship and green card applications to six months or less for the estimated five million people waiting on applications to be approved by the INS. \$100 million of the total is being allocated for fiscal 2004 as part of a \$235 million budget for the Bureau of Citizenship and Immigration Services, the new immigration services agency.
- \$18.1 billion for Border and Transportation Security (BTS) activities, an increase of \$9 billion (nearly 100 percent) over the 2002 enacted level. After accounting for start-up and one-time costs related to securing the nation's airports, the 2004 level supports an increase of about \$400 million above the 2003 level.
- about \$530 million is requested to support immigration investigations.
- an enhancement of the Administration's "smart borders" initiative that is intended to identify threats before they get near our borders while continuing to facilitate trade. This includes \$273 million for infrastructure and technology improvements.
- a continuation of the Administration's entry-exit initiative that will track both the entry and exit of visitors to the United States. The 2004 Budget requests an additional \$100 million for this initiative for a total of \$860 million from 2002 to 2004.
- over \$550 million is requested to enforce the customs laws, including investigative activities such as fraud, forced labor, trade agreement investigations, smuggling and illegal transshipment, and vehicle and cargo theft.

The budget plan also explains how enforcement activities will work within DHS. There will be two enforcement bureaus under the Border and Transportation Security umbrella which will be headed by former Congressman and DEA chief Asa Hutchinson. According to the DHS, the Bureau of Customs and Border Protection (BCBP) will focus on security at and between the ports-of-entry along the border. The BCBP includes inspection and other border-related resources and functions of the U.S. Customs Service, the Immigration and Naturalization Service (INS), including the Border Patrol, and the inspection functions of the Agricultural Quarantine Inspection program

Under the DHS plan, the new Bureau of Immigration and Customs Enforcement (BICE) will enforce the full range of immigration and customs laws within the United States and protect specified federal buildings. This is a change from the current system where the enforcement function at INS is focused exclusively on immigration matters. BICE is responsible for locating and removing aliens who are in the U. S. illegally and protecting the jobs of those who are legally eligible for them by inspecting places of employment for undocumented workers. BICE will maintain a nationwide anti-smuggling program and enforce customs laws including those against money laundering and child pornography. The BICE includes investigative and other enforcement resources and functions of the U.S. Customs Service, the INS, and the Federal Protective Service.

Aside from the two enforcement bureaus, Border and Transportation Security will also manage the visa issuance process at consulates. The budget plan describes the unusual relationship that will take place between the Department of State and DHS regarding the issuance of visas at consular posts around the world. Under the new

plan, DHS will "have legal authority" over the issuance and denial of visas. The State Department will "manage" the activities of consular officers and it too will have the power to deny visas based on foreign policy interests. But DHS will apparently have the right to veto a visa approval if it so chooses.

Immigration advocates were successful in convincing DHS to keep immigration services in a separate chain of command from immigration enforcement. The new Bureau of Citizenship and Immigration Services (CIS) will now handle the services side of the INS.

The DHS budget plan mentions that the agency is "committed to greatly improving immigration benefits to the more than seven million annual applicants. DHS will build and maintain an immigration services system that provides immigration information and benefits in timely, accurate, consistent, courteous, and professional manner."

The DHS is reiterating its commitment to six month turnaround times on naturalization and green card applications. DHS' new services bureau says it will get to this result with a three pronged initiative:

- Achieving a high-level of performance by establishing a clear, concrete performance milestones and actively monitoring process towards these milestones;
- Transforming business practices by implementing significant information technology improvements and identifying improvements to change the current way of doing business; and
- Ensuring integrity by establishing comprehensive quality assurance measures.

While the Department of Justice has many fewer responsibilities for immigration with the move of the INS to the Department of Homeland Security, the department still has responsibility for prosecuting immigration cases. In its budget request for FY 2004, the DOJ has requested a 6.3% increase in spending which includes 30 new positions in Immigration Litigation "to handle high-profile immigration cases that implicate the integrity of the September 11th investigation and the federal government's response."

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## 15. MAJORITY OF CALIFORNIA BABIES ARE HISPANIC

For the first time since the 1850s, a majority of babies born in California, the nation's most populated state, are Latino. This was the finding of a UCLA study released this week. The study by UCLA's Center for the Study of Latino Health and Culture concludes that this trend will have long term effects on the state's schools, work force and politics.

Latino births crossed the 50% line in the second half of 2001 according to data drawn from California's Department of Health Services. Latinos now constitute 1/3 of the state's population.

The numbers were higher in southern California. In Los Angeles County, 63.5% of babies are Hispanic. In San Diego County, 45.5% of babies are Hispanic.

The study made several projections:

- in 2006, half of the children entering kindergarten will be Hispanic
- in 2014, half of the children starting high school will be Hispanic
- in 2017, half of the workers entering the work force will be Hispanic
- and in 2019, half of the new voters in California will be Hispanic

Education advocates seized on the report to push for more attention to be paid to Latino students who are not performing as well as their counterparts. Others focused on the health care implications of the data noting that Latinos often have less access to health care resources than members of other groups.

The study can be found on UCLA's we site at <http://www.cesla.med.ucla.edu/html/pdf/majority.pdf>

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#### 16. NEW POVERTY GUIDELINES RELEASED

The US Department of Health and Human Services has released poverty guidelines for 2003. The guidelines are important because they serve as the basis for determining if an intending immigrant will become a public charge. In most cases, the immigrant's sponsor must be able to demonstrate that their incomes exceeds the poverty guidelines for their household size by 25%. The guidelines for this year are as follows:

#### 2003 Poverty Guidelines for the 48 Contiguous States and the District of Columbia

Size of family unit	Poverty guideline
1.....	\$8,980
2.....	12,120
3.....	15,260
4.....	18,400
5.....	21,540
6.....	24,680
7.....	27,820
8.....	30,960

For family units with more than 8 members, add \$3,140 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

#### 2003 Poverty Guidelines for Alaska

Size of family unit	Poverty guideline
1.....	\$11,210
2.....	15,140
3.....	19,070
4.....	23,000
5.....	26,930
6.....	30,860
7.....	34,790
8.....	38,720

For family units with more than 8 members, add \$3,930 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

#### 2003 Poverty Guidelines for Hawaii

Size of family unit	Poverty guideline
1.....	\$10,330
2.....	13,940
3.....	17,550
4.....	21,160
5.....	24,770
6.....	28,380
7.....	31,990
8.....	35,600

For family units with more than 8 members, add \$3,610 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

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## 17. LEGISLATIVE UPDATE

The President's efforts to court immigrant voters may have been dealt a blow by the recent appointments of Senator Saxby Chambliss and Representative John Hostettler to chair the Senate and House Immigration Subcommittees. The committees set the tone for the immigration debate in the country and both chairmen have decidedly anti-immigrant voting records.

Georgia Senator Saxby Chambliss has been appointed to chair the Senate Immigration Subcommittee. The previous two Republican chairs, Sam Brownback of Kansas and the current Energy Secretary Spencer Abraham are generally considered to have been pro-immigration. Immigration advocates around the country have raised alarm bells regarding Chambliss' appointment particularly in light of Chambliss' voting record on immigration and prior statements made by Chambliss regarding Muslims.

Chambliss admits that during a November 2001 meeting with Georgia officials, he told his audience that to combat terrorism a Georgia sheriff could be turned loose to "arrest every Muslim that comes across the state line."

After the remarks, Arab and Muslim groups complained to House Speaker Dennis Hastert about then Congressman Saxby Chambliss. Chambliss claimed the remark was a joke and offered apologies to anyone offended by the remark.

Chambliss' voting record tends to be against immigration, though not always so. He voted against an extension of Section 245i of the Immigration and Nationality Act twice in the last two years, for example. But he also voted to raise the H-1B cap, has supported guest worker legislation and has voted in favor of a nurse visa.

Indiana Republican John Hostettler takes over the House Immigration Subcommittee this session. Hostettler's record is almost uniformly anti-immigrant. His record includes the following key votes:

- Voted against a 245i extension in 1997, 2001 and 2002
- Voted against raising the H-1B cap in 1998
- Voted to authorize troops on the border in 2000 and 2001
- Co-sponsored legislation in 2002 that would have placed a moratorium on issuing non-immigrant and immigrant visas

One of the only pro-immigration items in Hostettler's record is a vote in favor of a nurse visa in 1996.

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The Senate passed its appropriations bill for the Department of Homeland Security. The bill originally had cut the entry-exit system, but the measure was restored due to an amendment introduced by Senator Jon Kyl (R-AZ). Funding for the program is set at \$80 million. The NSEERS special registration program was removed last week by an amendment offered by Senator Ted Kennedy (D-MA) and that program was still left unfunded in the bill passed by the Senate. The House must now pass its DHS legislation. It is not clear whether efforts to strip out NSEERS funding will succeed in that house and whether the funding would be restored when the bills are marked up in a conference committee comprised of members of both houses.

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To view our legislative chart, visit [www.visalaw.com/advocacy.html](http://www.visalaw.com/advocacy.html)