

Siskind's Immigration Bulletin
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Dear Readers:

This week's ABCs of Immigration column covers a topic that will largely be of interest to our readers in the health care field. This week the Delta Regional Authority, a new federal agency charged with promoting the development of the impoverished eight-state Mississippi Delta region, announced plans to launch a new waiver program for physicians on J-1 visas subject to a requirement to return to their home countries for two years.

The article carries special meaning for me. I live in Memphis, Tennessee, which is smack in the middle of the Delta region, and I was closely involved with the creation of the program. When the DRA was created at the tail end of the Clinton Administration, I learned that one of the missions of the agency would be to promote health care in the region. I knew that lack of access to doctors was a problem for people throughout this region of the country since I have worked with many of these communities in hiring foreign-born doctors. So why not have a J-1 physician waiver program to encourage international medical graduates to move to the region?

In early 2001, after President Bush was sworn in, Pete Johnson was appointed to be the first Federal Co-Chair of the DRA. The other co-chairs are the Governors of the eight states in the DRA region. I contacted Mr. Johnson, then a lawyer in Clarksdale, Mississippi, to see if he had an interest in the idea of a J-1 waiver program. Chairman Johnson reacted favorably to the idea and promised that after the DRA had its infrastructure in place and he was sworn in, he would begin looking at the idea.

Last spring the US Department of Agriculture announced the end of its J-1 waiver program and suddenly the physician shortage problem in the region took on a greater urgency. In the late spring, the DRA held a meeting to initially discuss the idea of its stepping in and creating its own J-1 program. I participated in that initial meeting along with Barry Walker, a well-respected immigration lawyer in Mississippi, Connie Burk, the immigration specialist for the University of Tennessee Health Science Center, Ed Tucker, a health care consultant charged with helping the DRA formulate its health care mission, and Pete Johnson.

The meeting was a breath of fresh air. The DRA made it clear that its goal is to help the people in the region and improving access to health care was a chief goal. Rather than being reluctant to take on the difficult task of establishing a J-1 program, it was eager to take on the project and get going as quickly as possible. Ed Tucker, Barry Walker and I were charged with examining the law and working to develop a draft program.

After several meetings with the Immigration and Nationality Act, the Code of Federal Regulations, numerous State 30 and Federal waiver programs, we crafted a program that was designed to comply with the law and meet the specific needs of the Delta region. Ed then left his consulting position with the DRA and passed the program on to Bill Triplett, Director of Policy at the DRA.

The DRA was then ready to test the program with two initial applications. One was a client of mine, a physician seeking to work in rural West Tennessee. The other was a physician seeking a position in Clarksdale. The DRA worked through the initial applications and sent them on to the State Department for review. DRA officials also flew to DC and met with the State Department to introduce the program to the State Department and make sure that it satisfied the State Department's Waiver Review

Division. It did and the first cases were approved just recently by the State Department.

With some assurance that the program would meet all of the legal requirements, this week the DRA unveiled the waiver program in a meeting with officials from the various DRA states. The program was also attended by Mike Berry, the official at the Department of Health and Human Services who will be administering that agency's new J-1 program. Now the program will undergo its final review based on comments from the State officials. The program should be up and running in the very near future, and we will report when the DRA releases its application materials. We can then look forward to many communities benefiting from having the doctors that they need so badly.

National security matters dominate immigration news this week as it has for much of the last two years. Canadian landed immigrants will now have to go through the visa application process in order to have proper security checks. The call in special registration program has been funded by Congress for another year. Registration dates for many nationals under that program were extended this week. Several Middle Eastern immigrants were arrested in an anti-terrorism investigation in Florida. We also report the findings of a poll that shows that security concerns are affecting the public's view of immigrants. We cover these stories as well as the week's other developments in this week's issue.

I also want to let readers know that I will be a panelist on a telephone seminar on the latest developments in health care immigration. The program is being produced by ILW.com and will be on February 28th. You can learn more and register online at <http://www.ilw.com/lawyers/seminars/february2003.shtm>

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

Regards,

Greg Siskind

2. THE ABC'S OF IMMIGRATION – THE DELTA REGIONAL AUTHORITY PHYSICIAN J-1 WAIVER PROGRAM

[Note: The DRA's waiver program is undergoing final review at the current time and applications are not yet being accepted. When the program official debuts you will find application materials on the DRA web site at www.dra.gov. For background on how this program came about, see the Openers article at the beginning of this newsletter]

The Delta Regional Authority is a new government agency headquartered in Clarksdale, Mississippi. It is a federal-state partnership serving a 240-county/parish area in an eight state region comprising parts of Mississippi, Louisiana, Alabama, Arkansas, Tennessee, Kentucky, Missouri and Illinois. A coverage map can be found at http://www.dra.gov/dra_coverage_map.html.

The agency's mission is to "remedy severe and economic distress by stimulating economic development and fostering partnerships that will have a positive impact on the region's economy."

The DRA also states that it is committed to helping all residents of the Delta region to have access to quality, affordable healthcare as a core part of the region's economic development. It is with this in mind that the DRA will sponsor J-1 physicians.

The DRA program, like other federal programs, is available to primary care physicians. Primary medical care includes general or family practice, general internal medicine, pediatrics, obstetrics and gynecology and psychiatry.

Physicians seeking a waiver must commit to providing primary care for not less than forty hours per week in a Health Professional Shortage Area (HPSA), Mental Health Professional Shortage Area (MHPSA), Medically Underserved Area (MUA), or Medically Underserved Population (MUP) in a DRA county. The physician must also sign a contract committing him or her to providing three years or more of service. The contract must also not contain a non-compete clause.

Employers seeking to hire physicians under the program must show that they have been making a good faith attempt to recruit an American doctor in the same salary range without success.

The DRA is committed to ensuring that impoverished people in the region benefit from the program so it requires that physicians agree to provide health services to individuals without discriminating against them because (a) they were unable to pay for those services or (b) payment for those services will be available under Medicare or Medicaid.

3. ASK VISALAW.COM

If you have a question on immigration matters, write Ask-visalaw@visalaw.com. We can't answer every question, but if you ask a short question that can be answered concisely, we'll consider it for publication. Remember, these questions are only intended to provide general information. You should consult with your own attorney before acting on information you see here.

Q - I would like to know what options are available to me to stay in the U.S. and continue working. I have been a student on an F-1 for four years and have graduated from college. I am now working, using OPT, and this expires in August 03. Can I renew my OPT? Can I apply for a different visa? Or do I have any other options available to me?

A - You only get 12 months of practical training when you complete your F-1 studies. Most F-1 students who seek to remain in the US after they are finished with their degree and their practical training, convert to an H-1B visa. That's because they meet two of the key requirements - they have a degree and they have an employer for whom they are working in a professional capacity. Most other visa categories will not fit the situation. For more information on H-1B visas, you might visit our web site at <http://www.visalaw.com/00jan3/10jan300.html> and at <http://www.visalaw.com/02dec1/2dec102.html>.

Q - I have a question about my EAD card. My wife applied for my EAD card/Change of Status(I485)for me on December 16th 2002.on 19th December 2002 we received a receipt money notice from INS. After that we never receipt anything else from INS. What should we do not?

A - If you have a receipt, that is a good sign. The next item is typically being called in for fingerprinting and then for the employment card. The employment card should take no more than 90 days. If 90 days pass and you have heard nothing on either, you should contact the INS to enquire about your case.

Q – I am currently nannying in Australia for an American family. They are moving back to the states next month and we need to know how they can legally bring me over. Do I just get a working visa, do they need to go through an agency to re-hire me (something we heard). Or is there another way to go about it?

A – You are basically only going to get a visa to work as an au pair and this would be for a maximum of one year. This would be under the J-1 visa category. You can find more information on J-1 visas on the State Department's web site at <http://exchanges.state.gov/education/jexchanges/private/aupair.htm>

Q – I am on F-1 currently, however I had J-1, sponsored and required 2-years of physical home residence before I can apply for the immigration/employment in the USA. What kind of documents to I have to present to the Consular after a full completion of my requirement to satisfy it and be able to apply for H-1 or immigration (my husband is American)?

A – There are no firm rules on what you need to present. However, the burden is on you to convince a consular officer that you have complied with the rules. You can present a variety of documents. First, you can show a passport with stamps showing entries and exits from your home country. You can show pay stubs, bank records, receipts, bills in your name and anything else you like that documents your presence in your home country.

Q – My girlfriend is a physician who got a J1 waiver and currently has an H1B. I am a US citizen. We are going to get married in a few months - will she be able to get a work permit after the wedding or will she need to keep her H1B until the end of the waiver?

A – Your girlfriend will need to plan on remaining in H-1B status and fulfilling her three year commitment (assuming that she got the waiver on the basis of promising to work three years in a medically underserved community). Marrying a US citizen does not get you around this requirement. It is sometimes possible to get a hardship waiver if you have a US citizen spouse, but the standards for such a request are very high and you will likely find that it is not worth the effort.

Q – Lets say you get a B2 visa approved and it is valid for only 3 months. Once you enter the US the INS officer provides you with a I-94 card. But the date of departure on the I-94 is 6 months from date of entry. (so the visa expires before that date) Would you work on the I-94 date or you visa expiration date? I would presume that you go according to the visa, b\c if this is expired you are out of status?

A - The visa controls when you are allowed to present yourself for entry to the US. The I-94 controls how much time you can remain in the US after you enter. So you can stay six months if the I-94 lists that is the expiration date. You can be in the US with an expired visa as long as the I-94 is still valid.

Q – My question is that, I am a US citizen. I would like to sponsor my brother to live here. How long the immigration process can take? Is the time period is different for few countries or the same for all countries?

A - Unfortunately, the time it takes to bring in a sibling is VERY long. It takes about 12 years right now. If you are from the Philippines, the wait is more than twenty years. Otherwise, the wait is the same for all countries.

4. BORDER NEWS

100 Undocumented Workers Arrested In Utah

The INS arrested more than 100 people working at Champion Safe, a safe manufacturing company in Utah. Steve Branch, the Salt Lake City INS officer in charge, said the arrests were the culmination of a long investigation but would not comment on how the INS learned of the workers' immigration violations, which could include visa overstay and illegal entry. Champion Safe declined to comment.

"There are a number of business we could enforce workplace operations on," Branch said, but wouldn't answer as to whether or not the INS had plans for similar raids in the coming weeks.

Federal Agents Seize Drugs Hidden In Look-a-like Border Patrol Vehicles

Federal agents foiled a drug smuggling scheme at the southern border of Arizona, and seized almost one ton of marijuana, according to an INS press release. The drugs were concealed inside a pair of SUVs decorated to resemble marked Border Patrol vehicles. The two vehicles, emblazoned with the Border Patrol logo, were intercepted early Wednesday morning by Border Patrol and U.S. Customs agents near Palominas, Arizona. Agents arrested the driver of one vehicle, an undocumented Mexican national identified as Martin Lopez Cardenas, 33, of Agua Prieta, Mexico. The second driver fled into the desert, presumably back to Mexico. Cardenas will remain in federal custody pending prosecution on drug smuggling charges.

Illegal White House Grounds Worker Pleads Guilty

The Mexican illegal immigrant who once worked on the White House grounds pled guilty in a federal court late last week. Salvador Martinez Gonzalez, 30, caused a national uproar last year when it was discovered he had been photographed with former President Bill Clinton and Vice President Dick Cheney and his wife, Lynne.

Martinez was arrested in December when he allegedly provided an INS inspector with a false passport and birth certificate. On Thursday, he pled guilty to using false documents to enter the country. Martinez could face a maximum penalty of up to 10 years in prison, plus a \$250,000 fine. Prosecutors informed the court that the government would recommend dropping the illegal entry charge. His sentencing was scheduled for May 1.

For two years Martinez was employed by HDO Productions, Inc., a company that coordinates outdoor events and was contracted by the White House.

Afghan Man Arrested In Arizona

On Tuesday police arrested an Afghan man who allegedly crossed the border illegally. The man, who speaks English but would not give his name, is in federal custody on immigration-related charges.

Reports say the man flagged down a Tucson police officer and said that he had been kidnapped by two Hispanic men. A police spokesman said there had been a dispute about money and that he likely paid the men to get across the border.

Officials report that more than 99.5 percent of people arrested crossing the border illegally are residents of Central or South America and Canada. The remaining 0.5 percent are citizens of 140 countries worldwide, according to Border Patrol statistics.

5. NEWS FROM THE COURTS

In the Matter of: GUY SANTIGLIA, Complainant

vs.

SUN MICROSYSTEMS, INC., Respondent.

US Department of Labor, Office of Administrative Law Judges

Released: February 19, 2003

A disgruntled former employee, Guy Santiglia, of Sun Microsystems succeeded in convincing a US Department of Labor Administrative Law Judge that the company violated Labor Condition Application rules. But the victory was a hollow one since the judge in the case found that the violations were minor and unintentional and did not justify a fine. The company was only ordered to modify its LCA posting policies.

The company was accused of a number of violations, but only one violation was found. The judge found that Sun failed to post two copies of the LCAs at the specific work site where the H-1B workers would be working. The company posted one copy at its headquarters and another at the work site. The company was ordered to always post two copies of the LCA at the work site.

Other claims against Sun were denied.

Employers are required to maintain a public access file at its principal place of business. The former employee claimed that Sun failed to make the LCA records available at the work site in Santa Clara, California. Sun maintained the records at its corporate headquarters in Newark, California. The Administrative Judge found in this case that Sun acted properly in maintaining the records in Newark.

Santiglia also argued that it was denied reasonable access to the files of Sun. He was required to make an appointment to see the files and was not permitted to see all of the boxes of files at one time. He was also requested to sign a log book before being given access to the files. The judge in this case found that none of these restrictions denied Santiglia access to the files.

Santiglia complained that he was not allowed to photocopy or photograph the files. He was permitted to take personal notes. The judge also found that this was not a violation of the LCA rules. The rules merely state that the files must be made available for public examination.

Santiglia complained that he was not provided access to the specific wages paid to specific workers. The judge found that while Sun must include documentation about the wage rate to be paid the H-1B worker in the public access file and must maintain specific payroll records and individual wage data, payroll records and wage data are not considered part of the public record and are only provided to the Department of Labor upon request.

Santiglia alleged that two H-1B workers were not being paid the prevailing wage. But the judge rejected the claim stating that Santiglia did not prove that the workers were, in fact, on H-1B visas.

Santiglia alleged that some of Sun's LCAs were invalid because the signatures on the documents were not the person stated. Instead, they were her assistant. The judge, however, found that this was permissible since the signature was authorized by Sun and the LCAs were personally reviewed by the person on whose behalf the document was signed.

Santiglia also complained that Sun made misrepresentations since it hired H-1B workers when other companies were laying off workers en masse. However, because Sun is not an H-1B dependent employer, it was, according to the judge, under no obligation to show that workers were not displaced.

Finally, Santiglia argued that two positions covered in the LCAs - IR System Technologist 1 and IR System Technology 2 do not meet the requirements for "specialty occupations." But the judge reminded Santiglia that the determination of whether a job is a specialty occupation is one left to the Immigration and Naturalization Service and not the Department of Labor.

Santiglia was represented in the case by Michael Hethmon, a staff lawyer for FAIR, an anti-immigrant organization. Sun was represented by Roxana Bacon, a lawyer in Phoenix, Arizona.

6. GOVERNMENT PROCESSING TIMES

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

Nebraska Service Center Processing Time Report (2/1/03)

Form	We are Processing cases with receipt notice dates on or before:
I-90 to replace lost, damaged or destroyed I-551	4/4/2002
I-90 to renew expiring I-551	4/3/2002
I-102 for replacement/initial nonimmigrant arrival/departure form	1/24/2002
I-129 for H1B classification	11/20/2002
I-129 for H2A classification	1/18/2003
I-129 for H2B classification	12/23/2002
I-129 for H3 classification	11/15/2002
I-129 for L classification	12/27/2002
I-129 for Blanket L petition	1/3/2003
I-129 for O classification	11/26/2002
I-129 for P classification	12/30/2002
I-129 for Q or R classification	12/4/2002

I-129 for TN classification	12/30/2001
I-129F (fiancée)	8/22/2002
I-130 for spouse, parent or child (under21) of a United States citizen	5/20/2002
I-130 for son or daughter (over 21) of a United States citizen	4/14/2001
I-130 for brother or sister of a United States citizen	4/14/2001
I-130 for spouse of a lawful permanent resident	4/12/2001
I-130 for unmarried child under 21 of a lawful permanent resident	4/14/2001
I-130 for unmarried son or daughter over 21 of lawful permanent resident	4/14/2001
I-131 for Advance Parole	12/13/2002
I-131 for Advance Parole for HRIFA principal applicant	4/17/2002
I-131 for Reentry Permit	5/20/2002
I-131 for Refugee Travel Document	12/31/2002
I-140 A (extraordinary ability)	7/17/2002
I-140 C (multinational executive or manager)	10/25/2002
I-140 D (professional holding adv. degree/alien of exceptional ability)	11/4/2002
I-140 E (skilled worker or professional)	10/31/2002
I-140 I (National Interest Waiver)	11/29/2002
I-140 G (other worker)	10/31/2002
I-212 permission to reapply for admission after deportation/removal	9/12/2002
I-360 petition for Amerasian, widow(er), or Special Immigrant	10/1/2002
I-485 Asylum-based	2/1/1999
I-485 Refugee-based	8/1/2001
I-485 Employment-based	8/1/2001
I-485 Haitian Refugee Immigration Fairness Act (HRIFA)-based	12/27/1999
I-526 Immigrant Petition by Alien Entrepreneur	not processed at the NSC
I-539 for extension of stay for F or M non-immigrant	1/7/2003
I-539 for extension of stay for J non-immigrant	1/7/2003
I-539 for extension of stay for L or H non-immigrant	11/1/2002

I-539 for extension of stay for other non-immigrant	10/7/2002
I-539 to change nonimmigrant classification to F or M	10/21/2002
I-539 to change nonimmigrant classification to J	1/3/2003
I-539 to change nonimmigrant classification to L or H	11/1/2002
I-539 to change to other nonimmigrant classification	8/30/2002
I-612 waiver of foreign residence requirement	9/20/2002
I-730 Refugee/Asylee Relative Petition	7/15/2002
I-751 Petition to Remove Conditions on Residence	5/24/2002
I-765 for initial asylee or asylum applicant authorization	12/23/2002
I-765 for employment authorization associated with Hurricane Mitch TPS	1/18/2003
I-765 for employment authorization associated with El Salvador TPS	8/27/2002
I-765 for employment authorization while I-485 is pending	12/13/2002
I-765 for all other employment authorization	11/11/2002
I-817 Application for Family Unity Benefits	10/17/2002
I-821 for El Salvador	8/27/2002
I-821 for Hurricane Mitch countries	1/18/2003
I-824 Application for Action on an Approved Application or Petition	2/14/2002
I-829 Petition by Entrepreneur to Remove Conditions	not processed at the NSC
I-914 Application for T Non-Immigrant	not processed at the NSC

Vermont Service Center Processing Time Report (2/15/03)

Form	"We are Processing cases with these receipt notice dates:"
I-90 to replace lost, damaged or destroyed I-551	1/14/2002
I-102 for replacement/initial nonimmigrant arrival/departure form	CURRENT
I-129 Petition for Nonimmigrant Worker H1B Cap	10/29/2002
I-129 Petition for Nonimmigrant Worker H1B Ext	10/24/2002

I-129 Petition for Nonimmigrant Worker H2A	CURRENT
I-129 Petition for Nonimmigrant Worker Other (H2B, H3, O, P, Q, R)	10/25/2002
I-129S Nonimmigrant Petition Based on Blanket L Petition	1/28/2003
I-129F (Fiancée)	CURRENT
I-212, I-601, I-612 Waivers	CURRENT
I-130 Immediate Relative Classes	7/13/2002
I-130 Preference Classes	2/8/1999
I-131 Application for Travel Document	1/29/2003
I-140 Immigrant Petitioner for Alien Worker E11	3/26/2002
I-140 Immigrant Petitioner for Alien Worker E12	4/3/2002
I-140 Immigrant Petitioner for Alien Worker E13	6/4/2002
I-140 Immigrant Petitioner for Alien Worker E21 (National Interest Waivers: 4/1/2002)	6/17/2002
I-140 Immigrant Petitioner for Alien Worker E31, E32, EW3 (Nurses: 9/16/2002)	6/6/2002
I-360 Petition for Widowed/Special Immigration	7/3/2002
I-360 VAWA	7/22/2002
I-485 Application to Register Permanent Residence or to Adjust Status	10/30/2001
I-539 Application to Extend/Change Nonimmigrant Status	12/18/2002
I-687	N/A
I-698 Application to Adjust Status from Temporary to Permanent Resident	N/A
I-751 Petition to Remove Conditions on Residence	2/1/2002
I-765 Employment Authorization (C)(8)	1/13/2003
I-765 Employment Authorization (C)(9)	1/29/2003
I-765 Employment Authorization Other	12/4/2002
I-817 Application for Family Unity Benefits	N/A
I-821 Application for Temporary Protected Status - El Sal	4/4/2001
I-821 Application for Temporary Protected Status - Nicaragua/Honduras	CURRENT
I-824 Application for Action on an Approved Application or Petition	2/27/2002

I-914 Application for T Non-Immigrant Status	1/15/2003
N-470, N-565, N-643	10/2/2002
N-600	10/2/2002

7. NEWS BYTES

The INS has added additional airports and other ports of entry through which persons who are subject to special registration must depart the United States. Eligible ports of entry are the following:

Amistad Dam POE, Texas;
 Alcan POE, Alaska;
 Anchorage International Airport, Alaska;
 Atlanta Hartsfield International Airport, Georgia;
 Baltimore-Washington International Airport, Maryland;
 Bell Street Pier 66 (Seattle) Cruise Ship Terminal, Washington;
 Bridge of the Americas POE, Texas;
 Brownsville/Matamoros POE, Texas;
 Buffalo Peace Bridge POE, New York;
 Cape Vincent POE, New York;
 Calexico POE, California;
 Calais POE, Maine;
 Cape Canaveral Seaport, Florida;
 Chicago Midway Airport, Illinois;
 Chicago O'Hare International Airport, Illinois;
 Champlain POE, New York;
 Charlotte International Airport, North Carolina;
 Chateaugay POE, New York;
 Cleveland International Airport, Ohio;
 Columbus POE, New Mexico;
 Dallas/Fort Worth International Airport, Texas;
 Del Rio International Bridge POE, Texas;
 Denver International Airport, Colorado;
 Derby Line POE, Vermont;
 Detroit International (Ambassador) Bridge POE, Michigan;
 Detroit Canada Tunnel, Michigan;
 Detroit Metro Airport, Michigan;
 Douglas POE, Arizona;
 Eagle Pass POE, Texas;
 Eastport POE, Idaho;
 Fort Covington POE, New York;
 Fort Duncan Bridge POE, Texas;
 Galveston POE, Texas;
 Grand Portage POE, Minnesota;
 Guam International Airport;
 Heart Island POE, New York;
 Hidalgo POE, Texas;
 Highgate Springs POE, Vermont;
 Honolulu International Airport, Hawaii;

Honolulu Seaport, Hawaii;
Houlton POE, Maine;
Houston George Bush Intercontinental Airport, Texas;
Houston Seaport, Texas;
International Falls POE, Minnesota;
John F. Kennedy International Airport, New York;
Ketchikan Seaport, Alaska;
Kona International Airport and Seaport, Hawaii;
Gateway to the Americas Bridge POE, Laredo, Texas;
Las Vegas (McCarran) International Airport, Nevada;
Lewiston Bridge POE, New York;
Logan International Airport, Massachusetts;
Long Beach Seaport, California;
Los Angeles International Airport, California;
Madawaska POE, Maine;
Miami International Airport, Florida;
Miami Marine Unit, Florida;
Minneapolis/St. Paul International Airport, Minnesota;
Mooers POE, New York;
Niagara Falls, Rainbow Bridge, New York;
Newark International Airport, New Jersey;
Nogales POE, Arizona;
Ogdensburg POE, New York;
Orlando, Florida;
Oroville POE, Washington;
Otay Mesa POE, California;
Pacific Highway POE, Washington;
Pembina POE, North Dakota;
Philadelphia International Airport, Pennsylvania;
Phoenix (Sky Harbor) International Airport, Arizona;
Piegan POE, Montana;
Pittsburgh International Airport, Pennsylvania;
Point Roberts POE, Washington;
Port Everglades Seaport, Florida;
Port Arthur POE, Texas;
Port Huron POE, Michigan;
Portal POE, North Dakota;
Portland International Airport, Oregon;
Progreso Bridge POE, Texas;
Raymond POE, Montana;
Roosville POE, Montana;
Rouses Point POE, New York;
San Antonio International Airport, Texas;
San Diego (Lindbergh Field) International Airport, California;
San Diego Seaport, California;
San Francisco International Airport, California;
San Juan International Airport and Seaport, Puerto Rico;
Sanford International Airport, Florida;
Sault St. Marie POE, Michigan;
Seattle Seaport, Washington;
Seaway International Bridge/Massena POE, New York;
Seattle-Tacoma International Airport, Washington;
St. Louis International Airport (Lambert Field), Missouri;

St. Thomas Seaport, U.S. Virgin Islands;
Sweetgrass POE, Montana;
Tampa International Airport and Seaport, Florida;
Thousand Islands POE, New York;
Trout River POE, New York
Washington Dulles International Airport, Virginia; and
Ysleta POE, Texas

The American Immigration Lawyers Association is reporting that the California Service Center has sent a request for evidence in an I-129 extension application filed by an Iraqi-born Canadian asking for proof that the beneficiary had registered under the call-in special registration program.

The INS California Service Center again is dealing with an embarrassing glitch. Recently, the CSC revealed that thousands of applications and documents were deliberately shredded by contract employees. This week the CSC sent out erroneous notices via email telling applicants that their cases were received and approved and they would be adjudicated within 15 days. The CSC is expected to send corrected notices shortly.

The Zogby Polling organization New York's Hamilton College have released a public opinion poll showing that while many people say that immigration is good for America, the number of immigrants admitted needs to be cut. More than 1,000 people were interviewed and the poll has a margin of error of three percent. The full report can be found online at <http://www.hamilton.edu/levitt/surveys/immigration/>.

Among the findings are the following:

- 41% of Americans favor cutting immigration levels
- 57% believe immigrants enhance American society
- People in the South and Central states are more likely to favor cutting immigration
- 49% of Republicans would cut immigration compared to a third of Democrats
- Nearly two-thirds of Americans believe the government is taking adequate steps to prevent terrorists from getting in to the country
- Most Americans think immigrants take jobs Americans do not want; only a quarter of those polled believed immigrants take jobs Americans want and only 12% were worried about an immigrant taking their job.
- 63% of the public favors barring immigrants from countries that harbor terrorists
- The younger you are and the more educated you are, the more likely you are to favor increases in immigration
- Religious Americans tend to be the toughest on immigration of people from the Middle East.
- Urban residents are much more likely than rural and small town residents to favor immigration

- The majority of Americans believe that most immigrants are in the US illegally (less than 30% are)
- The majority of Americans would feel uncomfortable if an immigrant from the Middle East moved nearby. That number dropped to 22% for Europeans, 27% for Asians and 22% for Mexicans
- Nearly three-fourths of the public would not increase refugee numbers to pre-September 11th levels.
- Over half of all Americans say immigrants should be eligible for welfare, food stamps, and medical assistance.

A former nurse for Tyson Foods testified at the company's alien smuggling trial that the company has employed undocumented immigrant children on its processing lines in Sedalia, Missouri. One worker, according to Kelly Englert, was just nine years old. Tyson's attorneys attacked Englert's credibility asking the nurse if she was angry that her "significant other" was fired in 2001.

The Justice Department is reported to have plans to issue new regulations which will severely restrict the ability of women fleeing trafficking, sexual slavery, honor killing, domestic violence and other gender-related human rights abuses from claiming asylum in the US. The INS would issue the rules before March 1st when the INS is officially absorbed into the US Department of Homeland Security and the Justice Department loses control over the process.

8. INTERNATIONAL ROUNDUP

Diana Fund Chief Praises Refugees

Andrew Purkis, chief executive of the Diana, Princess of Wales Memorial Fund, criticized the media last week for their negative coverage of asylum seekers and announced plans to extend education awards for refugee families. Purkis said the media was pursuing an anti-immigrant agenda and ignoring the contributions of young asylum seekers to British society.

"Young refugee and asylum seeker children are spoken about as if they are a problem. This award is about success and showing that diversity, harnessed properly, can be a source of richness," Purkis said.

Committee Tours Canada For Opinions On Immigration Bill

A parliamentary committee was in Edmonton Friday as part of a tour to get feedback on Bill C-18, which is now on its second reading in the House of Commons. Advocacy groups say the bill puts too much power in the hands of politicians and promotes racial profiling. Bill C-18 would give federal politicians the power to revoke citizenships and deport immigrants with little resistance.

Vinay Dey, the treasurer of the National Indo-Canadian Council, told the committee the bill would divide citizens into two categories.

"One can do whatever they want because they were born here. The other could have their citizenship stripped if they sneeze in the wrong direction," Dey said.

Rene Mercier, the senior spokesman for Citizenship and Immigration Canada, said the powers proposed in the bill would be used only in the most extraordinary cases.

"Obtaining a citizenship is a privilege," Mercier said. "Those who got it through lying deserve to lose it."

Afghan Association of Alberta President Hakim Faqiryar said no government should have the right to make those decisions. "A lot of immigrants will be living in fear because of C-18," he said.

South Korea Will Issue Permanent Visas To Distinguished Foreigners

South Korea's Justice Ministry said it plans to revise the immigration law to grant permanent visas to foreigners who have made a significant contribution to the nation. Distinguished foreigners will be granted a permanent status nearly on par with South Korean citizens, even if they do not meet the current law's five-year residency requirement.

Lee Deok-ryong, an official at the Justice Ministry's immigration planning bureau, said the beneficiaries will be able to do business, seek employment, attend schools and receive a range of social benefits.

The visas will be given to individuals who helped improve South Korea's international image or evoked pride in South Korean nationals. One potential candidate is Guus Hiddink, a former soccer coach who led South Korea to the World Cup semifinals.

"The measure was prepared in an effort to express gratitude to foreigners who contributed to the country and to remain ties with them," Lee said.

9. GROUPS PROTEST PROPOSED INS RULE LIMITING TOURIST VISA STAYS

Last April the INS issued a proposed rule that would limit tourist visa stays to 30 days unless the visitor could justify to an INS examiner why a longer stay is justified. The INS explained that security concerns justified the rule. The rationale of the agency is that it would be easier to keep track of people if they were staying for shorter periods in the US.

That proposed rule came under fire from a number of groups and individuals, particularly from the tourist industry. More than 10,000 comments were received by the INS and even Florida Governor Jeb Bush, the brother of President Bush, openly criticized the proposal. Now a coalition of groups has sent acting INS Commissioner

Michael Garcia asking the INS to permanently table the proposal. The group is comprised of the following organizations:

American Hotel & Lodging Association
American Immigration Lawyers Association
National Association of Home Builders
National Association of Realtors
Travel Industry Association of America
U.S. Chamber of Commerce

The group makes several arguments to justify killing the rule:

- The proposed rule would deter international travel to the U.S. by creating uncertainty about the actual admission period.
- The proposed rule would increase the likelihood that travelers would inadvertently overstay their admission.
- The proposed rule would render the U.S. less attractive to potential investors.
- The proposed rule would negatively impact the residential real estate industry.
- The proposed rule would negatively impact or deter Canadian visitors
- The proposed rule would severely circumscribe the ability of multinational employers to use the B-1 for longer-term business trips.

The group also had specific suggestions to modify the proposal if, indeed, it is finalized. At a minimum, the INS should provide clear guidance to visitors making their travel plans concerning what they will need for their admission to the US. The INS should maintain a minimum period of admission, perhaps 90 days, so as not to deter international travel and tourism. The rule should not change current laws with regard to extending a stay. The INS should not drop the current maximum period of stay from one year. And it should provide a specific exemption for "seasonal or occasional" homeowners and renters.

10. BROTHER OF DEPORTED ISLAMIC JIHAD SUPPORTER NABBED IN TERROR CELL ARRESTS

FBI agents say they have cracked a terrorist cell in Tampa, Florida. Agents arrested Sami Al-Arian, 45, a former engineering professor at the University of South Florida, and alleged that he assisted Palestinian Islamic Jihad, a terror group accused of killing more than 100 people around the world, including two Americans, in suicide bombings from 1992 to 2002. Al-Arian and seven others were named in a 120-page indictment and charged with 50 counts of racketeering, conspiracy, extortion, perjury, obstruction of justice and immigration fraud. If convicted, the defendants could face life in prison.

Also arrested were two men living in the Tampa area, and one in the Chicago area. Sameeh Hammoudeh and Hatim Naji Fariz both reside in Florida. Hammoudeh is an

instructor and student at USF and an administrator at the Islamic Academy of Florida. Fariz is a manager for a medical clinic. Ghassan Zayad Ballut, a small business owner, resides in Tinley Park, IL. All are alleged members of PIJ.

The other four suspects named in the indictment are still at large and are being sought overseas: Ramadan Abdullah Shallah, 45; Bashir Musa Mohammed Nafi, 50; Mohammed Tasir Hassan Al-Khatib, 46; and Abd Al Aziz Awda, 52.

Attorney General John Ashcroft said it was a major victory in the war against terror and described Al-Arian as the secretary of Islamic Jihad's worldwide governing group.

"The individuals named in this indictment play a substantial role in international terrorism," Ashcroft said. "They are 'material supporters' of foreign terrorist organizations. They finance, extol and assist acts of terror."

"Our message is clear: We make no distinction between those who carry out terrorist attacks and those who knowingly finance, manage or supervise terrorist organizations. We will bring justice to the full network of terror," Ashcroft said.

Prosecutors say the suspects created three front corporations and religious organizations to help raise money for Palestinian Islamic Jihad, which was declared a "foreign terrorist organization" by the U.S. in 1997. The indictment says the group raised millions of dollars for families of suicide bombers and helped the bombers write wills.

Much of the evidence was gleaned from wiretaps, informants and other top-secret information gathering methods. Al-Arian has been the subject of secret surveillance for several years, by U.S. criminal investigators and by intelligence agents. At the time, U.S. law prohibited the two agencies from sharing evidence. Ashcroft credited the new Patriot Act for aiding the investigation by allowing more communication between the FBI, the CIA and other intelligence agencies.

Eight years ago, in a FBI raid on Al-Arian's home and the World Islam and Studies Enterprise offices, agents gathered secret evidence that sent his brother, Mazen Al-Najjar, to jail for 3 1/2 years. The INS claimed Al-Najjar was a threat to national security but never charged him with a crime. In 2000, an immigration judge ruled that Al-Najjar was not a security threat and said there was no evidence that either the World Islam and Studies Enterprise or the Islamic Committee for Palestine was a front for Islamic Jihad. In late 2001, Al-Najjar was again arrested and placed in detention, but this time the detention was not based on secret evidence but instead because he had overstayed his student visa. Al-Najjar applied for asylum, claiming he would face persecution if he returned to the United Arab Emirates. The Eleventh Circuit denied his application and Al-Najjar was deported in August.

In September 2001, Al-Arian appeared on the Fox News talk show The O'Reilly Factor. O'Reilly asked Al-Arian if the University of South Florida was a hotbed for terrorists, a charge that was made in a 1994 documentary, Jihad in America. Later that year, USF President Judy Genshaft fired Al-Arian, saying the school was unable to guarantee his safety and citing his failure to tell O'Reilly's audience he didn't speak for the University.

Al-Arian was born in Kuwait and is a stateless Palestinian. He is the only member of his family who is not a U.S. citizen; his application has been in limbo for more than 20 years.

11. GUEST ARTICLE: REGULATORY SCHEMES IN THE US AND AUSTRALIA COMPARED

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While the US and Australia differ in the way they regulate migration assistance, the lesson to be learned from both systems is essentially the same: lawyers are better regulated and are likely to provide a higher level of service than other kinds of migration consultants.

The biggest difference between the US and Australian regulatory environment is that the US has no national regulating authority comparable to Australia's Migration Agents Regulation Authority (MARA) and regulations vary from state to state.

In California, for example, consultants must pay a \$50,000 bond. However, they do not have a license that can be revoked on grounds of incompetence. In Australia, by contrast, all migration agents must be registered with MARA and may have their registration revoked if they are deemed to be incompetent or unscrupulous after a MARA investigation.

But while the US places less regulatory oversight on "immigration consultants" (the US equivalent of an Australian migration agent), the role of such a consultant is significantly more limited.

California makes a much stronger delineation between a Lawyer's assistance and other types of immigration assistance than MARA does.

MARA makes no regulatory delineation between Migration Agents, Lawyers registered as migration agents and Lawyers with specialised accreditation in immigration law.

MARA's code of conduct stipulates that a "migration agent's professionalism should be reflected in a sound working knowledge of the Migration Act and Migration Regulations, and other legislation relating to migration procedure, and a capacity to provide accurate and timely advice."

However, non-lawyers may register as migration agents by taking a short course approved by MARA. Although not registered as lawyers, there is nothing to stop a registered migration agent without a law degree from giving advice on legalistic immigration matters, so long as he or she has completed an approved course required for registration.

Following a recent review of the migration industry, MARA is expected to improve competence through coursework and more comprehensive entry examinations. MARA may also introduce an alternative means of entry whereby individuals could complete a period of supervised practice followed by an entrance examination.

By contrast, California state law more or less restricts Immigration consultants to filling out forms and translating documents, which is a considerably more limited role than that of an Australian migration agent.

California law prohibits immigration consultants who are not attorneys from giving legal advice. Moreover, they must prominently display a sign in their offices stating they are not attorneys.

In both countries, standards are more stringent for Lawyers, who can be prevented by legal regulatory oversight bodies from practicing on grounds of incompetence and negligence.

California law also requires immigration consultants to provide a contract in the native language of the client, and prohibits the use of the Spanish term "notario," which can mean attorney or judge in some parts of Latin America.

The "notario" problem still persists, however. Greg Siskind's immigration law bulletin this month reported that advocacy groups in Illinois have filed a suit against the US Immigration and Naturalization Service federal court on behalf of 5,000 illegal immigrants who were defrauded by phony immigration consultants, many calling themselves "notarios."

Likewise, MARA is trying to deal with ongoing problems in Australia. New rules that come into effect beginning March 1, 2003 will more clearly spell out conflict of interest issues relating to practice. These moves are in response to a number of issues where migration agents had clearly stepped over the line in keeping their various business interests properly separated.

In both countries the authorities have had trouble prosecuting immigration misconduct because immigrants, especially undocumented ones, are a generally vulnerable population and are less likely to come forward with information.

12. SPECIAL REGISTRATION DEADLINES EXTENDED

The INS has extended the deadline for two groups of nationals subject to the new NSEERS special registration program.

The registration period for Saudis and for Pakistanis has now been extended until March 21st from the original February 21st deadline. Also, the deadline for nationals of Bangladesh, Egypt, Indonesia, Jordan and Kuwait has been extended from March 28th to April 25th.

The INS' press release announcing the extensions also mentioned two other important points about special registration. First, prosecutorial discretion will be considered if a registrant has a currently-filed request or application for a benefit,

appears to be immediately and prima facie eligible for the benefit sought and if no adverse or disqualifying information is developed through indices checks or other sources.

Second, the news release made a point of mentioning that embassy officials will be permitted to be present at INS offices to assist temporary foreign visitors who are required to enroll in NSEERS. Embassy officials will have access to registrants who are waiting to have their interviews in order to consult with them.

13. CONGRESS CONTINUES SPECIAL REGISTRATION PROGRAM; IMMIGRATION FILING FEES TO GO UP AGAIN

The House and Senate have agreed, and President Bush has signed, legislation to continue funding the NSEERS special registration program. The program, which calls for nationals of certain Arab and Muslim countries, as well as North Korea, to report in at the INS for fingerprinting and questioning, has been controversial particularly since it has resulted in a great many detentions. The Senate recently stripped funding for the program, but agreed to re-authorize funding for the program after negotiations with the House.

But while Congress will provide the entire \$362 million requested for the program, it is being provided on the condition that the Department of Homeland Security develop a strategy to replace the INS' "current paper-based system and stovepiped databases."

The INS will be required, as part of the agreement, to deliver by March 1st a number of documents on the NSEERS program to the Senate and House Appropriation Committees. The documents are supposed to offer information on why so many people with pending green card applications have been detained.

House and Senate leaders also reached agreement with the White House to restore the surcharge for refugee and asylee applications. That means INS filing fees will rise again to the amounts that existed prior to the fee drop in January. Whether that fee increase will be retroactive remains to be seen. It is also not clear when the fee increase will occur.

14. STATE DEPARTMENT RELEASES VISA PROCEDURES FOR CANADIAN LANDED IMMIGRANTS

Earlier this month we reported that the State Department had changed its policy regarding landed immigrants in Canada seeking entry to the US. Landed immigrants from many countries have not needed a visa to enter the US. Under the new rule, landed immigrants will have to seek visas to enter the US and will not receive special entry concessions as Canadian citizens do.

Citizens of the following Commonwealth countries as well as Ireland were previously exempt from seeking a visa if they possessed landed immigrant status:

Antigua & Barbuda	Grenada	Namibia	South Africa
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<i>Australia</i>	Guyana	Nauru	Sri Lanka
Bahamas	India	<i>New Zealand</i>	Swaziland
Bangladesh	<i>Ireland</i>	Nigeria	Tanzania
Barbados	Jamaica	Pakistan	Tonga
Belize	Kenya	Papua New Guinea	Trinidad & Tobago
Botswana	Kiribati	Samoa	Tuvalu
Brunei	Lesotho	St. Kitts & Nevis	Uganda
Cameroon	Malawi	St. Lucia	<i>United Kingdom</i> (its colonies, territories, and dependencies)
Cyprus	Malaysia	St. Vincent & the Grenadines	Vanuatu
Dominica	Maldives	Seychelles	Zambia
Fiji	Malta	Sierra Leone	Zimbabwe
Gambia	Mauritius	<i>Singapore</i>	
Ghana	Mozambique	Solomon Islands	

Countries in bold italics are Visa Waiver countries and nationals of those countries can still seek entry under that program.

The State Department has now released additional information on procedures for landed immigrants seeking visas to come to the United States. The new rules will begin on March 17th and after that date all landed immigrants seeking entry to the US must possess a valid passport and non-immigrant visa. All consulates in Canada have now been instructed to accept applications from the affected landed immigrants.

Specific details on applying for visas can be found at the web site of the US Embassy in Ottawa at http://www.usembassycanada.gov/content/content.asp?section=travel&document=landed_newrequirements_021803.

15. LEGISLATIVE UPDATE

The Virginia legislature has passed a bill which would bar illegal aliens from being eligible for in-state tuition rates at the state's colleges and universities.

The Senate has named all members of its Immigration Subcommittee. The Republicans include
Saxby Chambliss, Chairman (Georgia)
Jon Kyl (Arizona)
Larry Craig (Idaho)
Mike DeWine (Ohio)
John Cornyn (Texas)

The Democrats on the subcommittee include
Diane Feinstein (California)
Richard Durbin (Illinois)
Edward Kennedy (Massachusetts)
Charles Schumer (New York)

Idaho Bill Would Allow Driving Licenses For Illegal Immigrants

Senate Transportation Committee Chairman Cecil Ingram held a public hearing last week for a bill that would grant driving privileges to illegal immigrants. Latinos from all over the state arrived to voice support for the bill, in which illegal immigrants could obtain an Individual Taxpayer Identification Number to qualify for a driver's license. Driving permits typically require Social Security numbers, which are available to legal immigrants and U.S. citizens. Idaho is the only state in the Northwest that requires a legal immigration status in its driver's license regulations.

Jessica Fry of the Idaho Community Action Network testified that the bill would make roads and communities safer by testing the driving skills of immigrants who are currently traveling without a license. Fry said there were no federal or state barriers preventing Idaho from enacting the legislation.

Lawmaker Seeks Citizenship For Border Tribe

U.S. Representative Raúl Grijalva introduced legislation last week that would grant citizenship to 8,000 Tohono O'odham Nation tribe members, who live on land that was artificially divided by the U.S.-Mexican border in 1854, when the United States purchased what became the southern portions of New Mexico and Arizona. Although the government has allowed tribe members in both countries to cross the border freely for decades, border security has tightened, making travel more difficult for tribal members who were born in the United States but cannot prove it. The Grijalva bill is identical to one introduced in 2001 by Rep Ed Pastor, a Phoenix Democrat who represented the Tohono O'odham Nation.

To view our legislative chart, visit www.visalaw.com/advocacy.html