

Siskind's Immigration Bulletin
February 28, 2003

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SSHD serves immigration clients throughout the world from its offices in the US,
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Dear Readers:

This week marks the beginning of a new era in the history of American immigration. The INS as an agency will be pronounced dead this evening. Its heirs are three new agencies - The Bureau of Citizenship and Immigration Services (BCIS), the Bureau of Immigration and Customs Enforcement (BICE) and the Bureau of Customs and Border Protection (BCPB). The Department of Homeland Security replaces the Department of Justice as the parent department. We know the names of the new agency heads and we know that the INS' very useful web site will transition to the Department of Homeland Security (mostly as part of the BCIS). You can get there now by going to www.immigration.gov. Beyond that, your guess is as good as mine. Even officials at the soon-to-be-former INS have no idea what is going on.

So it is hard to delivery a eulogy for the INS. And besides, there would be few mourners at this funeral. Conceivably, all we will see is a name change and added chaos as three agencies operate independently. I am an optimist by nature, however, and believe that after a period of uncertainty and natural difficulties in the transition, the change will be a good thing. Hopefully a services agency that is not trying to be an enforcement agency at the same time can actually do a decent job providing services. And maybe Homeland Security can increase the professionalism and morale problems plaguing the INS' enforcement efforts over the last several years. Some of my colleagues have said that they would rather maintain the status quo (the devil we know) versus something even worse in the future. But at least when it comes to service at the INS, it is hard to see how things could get worse (well, maybe things could always get worse, but I shudder to think what that would be like). This President wants to win the next election and knows that immigrant voters are the key. So he has a real stake in making the change work. A successful transition and a dramatic improvement in service at the INS would go a long way to showing he is a friend of immigrants.

The other big news in immigration this week is the reversion back to INS fees that existed prior to January 24th. Was it all just a dream? A strange form of a tax holiday designed to pump money into a struggling economy? Actually, it was really probably just the result of an oversight on Congress' part when it failed to authorize the INS to charge a surcharge to help support refugees in the this country.

In firm news, today I participated in a national telephone seminar on physician immigration run by ILW.com. If you have never participated in an ILW.com seminar via telephone, they are excellent. I'm posting my notes from my remarks in this issue for those of you not able to participate in the call. I also was interviewed today by National Public Radio.

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 END OF THE IMMIGRATION AND NATURALIZATION SERVICE

At midnight on February 28, 2003, after nearly 70 years of service, the Immigration and Naturalization Service will cease to exist. The agency, which has come to represent endless lines, lost paperwork, and bureaucracy, will be divided into three bureaus, absorbed into the Department of Homeland Security. The DHS was created in response to the Sept. 11 terrorist attacks and is actually a collection of a number of previously existing agencies connected to the nation's security. Moving the INS and its 36,000 employees will mark the biggest change to immigration services since June 10, 1933, when the Bureau of Immigration and the Bureau of Naturalization were combined to create the INS.

This is not the first time that immigration services have been moved into another department; seven years after the INS was formed, in 1940, the agency was reassigned to the Department of Justice, as an attempt to improve security during a time of war. Since that time, the INS has balanced seemingly contradictory roles of service and enforcement, and many critics would say they failed in both. Under the new organization, the agency's service branch will be separated from its law enforcement functions.

Federal officials promise that the new bureaus will be more efficient and user-friendly, while at the same time improving national security. The Department's main task will be protecting America's borders against terrorism.

In a news conference Thursday, President Bush and Secretary Tom Ridge spoke before employees of the new department.

To underscore the mammoth task to be performed by the DHS, Ridge said, "Today, more than one million people will cross our borders - some by car, some by sea, some by plane. Today, 1.6 million Americans will board planes traveling within our borders. Today, 95,000 miles of coastland and waterways will meet our agencies' watchful eyes. Today, 2.4 million pieces of luggage will pass through the country's 429 commercial airports. And today, thousands and thousands of visa and green card applications will reach the desks of the I.N.S. offices. And that is just some of the work the agency will do every single day."

These duties will be handled by three separate bureaus within the Department of Homeland Security:

1. The Bureau of Customs and Border Protection (BCBP) will merge functions now run by separate agencies. It will patrol the nation's borders, monitor migration, and control the traffic of imports and exports. The BCBP will be led by U.S. Customs Commissioner Robert Bonner, a U.S. attorney and federal judge from Los Angeles.
2. The Bureau of Immigration and Customs Enforcement (BICE) will handle deportation and the investigation of immigration law violations. Over the BICE will be acting INS Commissioner Michael Garcia.

These two bureaus will operate under the Border and Transportation Security Directorate (BTS), to be headed by Asa Hutchinson, a former congressman from Arkansas and head of the Drug Enforcement Administration.

3. The Bureau of Citizenship and Immigration Services (BCIS) will process applications for citizenship, permanent residency and asylum, and it will handle other administrative functions. Over the BCIS will be Eduardo Aguirre, a Houston resident and former vice chair of the Export-Import Bank of the United States.

The DHS has also absorbed 22 other agencies, including the Coast Guard and the Secret Service.

In a February 26 press release, Acting INS Commissioner Michael Garcia said, "We are committed to making this transition as seamless and smooth as possible for those we serve."

To reach that goal, the BCIS is mailing out materials to immigration offices across the country with key information about the transition:

1. INS forms and documents are still valid and will continue to be accepted by BCIS and other agencies
2. Local offices will remain in existing INS locations, including Application Support Centers and Service Centers
3. Forms should continue to be mailed to the address indicated in forms and notices
4. The National Customer Service Call Center will continue to be available at 1-800-375-5283
5. Customers will still be able to download forms and check the status of their case online. The new web address for BCIS will be www.immigration.gov

Officials and immigration experts say there will be major changes, including electronic filing of applications, use of biometrics in identification credentials, more rigorous background checks, implementation of high-tech systems to reduce backlogs at checkpoints and border crossings, consolidation of personnel and procedures, and improved tracking of foreign students using SEVIS, an electronic database system currently being implemented.

"To fully realize success in the Department of Homeland Security, we need to exploit technologies that we have only dabbled in up to this point," said Mike Becraft, the INS' acting deputy commissioner.

The well-regarded INS web site will remain in existence. The new web address is www.immigration.gov.

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 have a friend that is an US Citizen and wish to make the petition on behalf of her mother and father. She has a brother that is 18 years old. Could the boy apply together with his mother or father and get the residence? or he has to wait for another petition like US citizen sister to brother. Thanks for your response.

A - The parents could not in turn bring in the younger sibling. They would have to become green card holders and then reapply for the other son. Or the son would need to find his own visa strategy that does not depend on the parents.

Q – My H1 just got approved and i wanted to travel to Canada to get it endorsed on my Passport...i was wondering if US consulates in Canada (Montréal) are still processing these visa's ?? I am; female and a citizen of Pakistan.... thank u for your time

A – They're still processing. You can set up an appointment at www.nvars.com.

Q – I understand that under the new regulations affecting foreign students, there is a rule that M-2 and F-2 children are prohibited from engaging in full-time study, and that there is a provision permitting current M-2 children engaged in full-time study before January 1, 2003 to continue such study, but requiring an application for change of status to be filed by March 11, 2003. My question is: If the M-2 student doesn't change the status by 3/11/03, will be out of status? The DSO have to notified to the student to proceed with such change of status or should be the student initiative?

A – F-2 and M-2 cannot be degree seeking post-secondary students. However, they can still pursue K-12 education. If they were pursuing a graduate or undergraduate degree and were enrolled before January 1, 2003, then they must apply for a change of status to F-1 by March 11, 2003, or stop studying. If the M-2 does not apply for a COS by March 11, 2003, and if she is continuing to study in a degree program other than K-12 education, then the M-2 will be out of status.

Q - I lost my I-94 and don't know what to do?

A - You would file Form I-102 with the INS. If you don't have a copy of the I-94, you're supposed to show the biographical page in the passport and a copy of the page indicating admission as claimed, or other evidence of your admission. Otherwise, you are supposed to give a full explanation why you cannot give any of the above evidence, along with a copy of evidence of your identity and copies of any evidence in your possession to substantiate your claim. I-102s can take several

months to get, but you'll have a receipt and a copy of the application and that might be helpful.

4. BORDER NEWS

In conjunction with the War Against Trafficking Alliance, the State Department sponsored a three-day conference this week devoted to discussions of strategies for fighting sex trafficking and rehabilitating victims. More than 100 nations were represented, by border guards, judges and vice presidents. Among those speaking were Attorney General John Ashcroft, Secretary of Health and Human Services Tommy Thompson and Deputy Secretary of State Richard Armitage. As many as 4 million women and children are estimated to be trafficked annually into countries such as Jamaica, Saudi Arabia, France and the United States.

"Sex trafficking is more than just a serious violation of the law," Ashcroft said. "It is an affront to human dignity. It is an assault on human values."

Last weekend in San Antonio, a Border Patrol agent shot and killed Juan Patricio Peraza Quijada, 19, of Mexicali, after he allegedly tried to strike the agent with a metal pipe. On Monday Mexican officials in El Paso charged that the agent used excessive force and will ask the FBI and other government agencies to investigate the shooting. Quijada was approached by two agents who suspected he might have been in the United States illegally, when he fled with the agents in pursuit. Officials say he threw a ladder at one of the agents, striking him, and that he also threatened them with a metal pipe. According to the report, agents warned Quijada to release his weapon, but he instead attacked, and the agent opened fire. He was transported to Thomason Hospital and pronounced dead.

The 11th U.S. Circuit Court of Appeals upheld a U.S. District decision dismissing a lawsuit challenging the indefinite detention of Haitian asylum seekers. District Judge Joan Lenard wrote in his ruling of May 2002 that politicians in Washington - and not the courts - hold the keys to freedom for Haitian asylum seekers held in detention. The lawsuit was filed by several Miami immigration attorneys on behalf of more than 240 Haitian migrants who arrived in South Florida in December 2001. Of that group, 11 adults and one minor remain in INS custody.

Walther Velasquez, 37, an employee in the Delray Beach office of the Social Security Administration, faces federal charges of supplying false Social Security numbers to illegal immigrants and is linked to a counterfeiting ring based in Boston. Velasquez was indicted on 12 counts relating to the counterfeiting of Social Security cards for illegal immigrants. He is being held in Palm Beach County Jail without bond. Officials say the ring of counterfeiters has taken in about \$4.3 million in the scheme.

The U.S. State Department says it has approved plans for the United States to open its doors to 12,000 Somali Bantus, a people devastated by massacre and rape after Somalia crumbled into civil war in 1991 and have languished in Kenyan refugee camps for the last dozen years. Metro Atlanta will be one of the top destinations for Somali Bantus, who will be sent to cities in 31 states, including Dallas, Houston, Phoenix and Salt Lake City. Few of them speak English, and many cannot read or write even in their native language. The refugees will have a difficult time adjusting to the modern world, but they will escape a legacy of persecution and have opportunities to work and educate themselves.

The Fresno County Sheriff's Department will formally recognize a Mexican matricula consular cards as identification, Sheriff Richard Pierce announced Monday. The Sheriff's Department joins several banks and 25 other sheriff's departments in California to recognize the card as valid identification, but it will be the largest agency in the area to do so yet. Advocates for tighter immigration limits criticized the move, saying most who hold the cards are illegal aliens. Pierce responds by saying that police need to identify people, many of whom are victims of crime. He said that accepting the cards will encourage people to step forward when they are witnesses to crimes without fearing deportation.

Thirteen states accept the matricula consular cards in issuing driver's licenses, as does 800 police departments; and more than 80 cities, among them Grand Rapids, Los Angeles, Chicago, Denver, Houston, Dallas, Austin and Fort Worth. The ID card's use has been rejected by New York State and New York City.

The family of Jesica Santillan, the teenager who died after a botched heart-lung transplant, fear burying the girl in their native Mexico because they would not be able to return to the United States, said family friends. The family entered the country illegally to seek medical care for the girl; they paid smugglers to sneak them across the border. Jesica died two days after receiving a second heart and lung transplant. Surgeons had mistakenly transplanted organs of the wrong blood type in the first operation, and Jesica was near death by the time the second surgery began.

A report by Justice Department Inspector General Glenn Fine says that the INS has been ineffective at deporting illegal aliens and fails to properly expel foreigners who may include potential terrorists. The report found that only 13 percent of illegal aliens who have been ordered out of the country, but have not been detained, have actually left. Almost 94 percent of those who were held in the agency's custody were removed. Only six percent of illegal foreigners from countries identified by the United States as "sponsors of terrorism" not under arrest ever left the country after being ordered deported, and the INS expelled just three percent of illegal aliens whose asylum applications were denied.

Most members of Congress believe Canada is a wide-open gateway for terrorists seeking to enter the United States, Senator Susan Collins (R-ME) told a conference on Canada-U.S. relations Thursday. Collins chairs the Senate committee that oversees the new Department of Homeland Security, which will be responsible for security along the Canada-U.S. border.

"Canadian immigration is looser than in the U.S. and more porous and represents a vulnerability," she said.

Senator Collins grew up in Caribou, Maine, and is said to have crossed the border regularly into Canada.

"Those who do not live in border states and don't have the daily experience of crossing the border believe we really need to regain control of our borders," Collins said.

Thirty-seven illegal workers were arrested in an INS raid this week at the Francis E. Warren Air Force Base in Cheyenne, home to the country's largest strategic missile-defense unit.

Officials said the presence of undocumented workers at the Inter-Continental Ballistic Missile unit was an egregious breach of security but that they did not believe the employees were on the base to harm the United States.

Base spokesman Kenneth Smith said the unlawful employees were working for a subcontractor at two construction sites. The investigation found that some of the workers had bogus papers and ID cards, he said.

5. NEWS FROM THE COURTS

U.S. 4th Circuit Court of Appeals

US v. PRINCE-OYIBO (02/27/03 - No. 02-4104)

"Marvel Johnson Prince-Oyibo appeals his conviction on one count of travel document fraud. Prior to trial, the Government moved in limine to exclude both the results of Prince-Oyibo's polygraph examination, and evidence that he suffered persecution as a Christian in his predominantly Muslim home country of Nigeria. During the course of the jury trial, the district court granted both portions of the Government's motion, thereby excluding both the polygraph evidence and the evidence of persecution. In his appeal, Prince-Oyibo asserts that the evidentiary exclusions constitute reversible error. For the reasons stated below, we disagree and affirm."

The full text of this opinion can be found on Findlaw.com at <http://laws.lp.findlaw.com/4th/024104p.htm>

U.S. 5th Circuit Court of Appeals

US v. MENDOZA-MATA (02/25/03 - No. 01-51147)

"Mario Mendoza-Mata appeals from the denial of his motion to withdraw his guilty plea and to dismiss the indictment entered against him for illegal reentry into the United States in violation of 8 U.S.C. § 1326. For the following reasons we affirm.

The full text of this opinion can be found on Findlaw.com at <http://caselaw.lp.findlaw.com/data2/circs/5th/0151147p.pdf>

* * *

Sharma v. Ashcroft (3rd Circuit Court of Appeals)

In this case the Third Circuit Court of Appeals held that a conviction for bank fraud and conspiracy was reasonably determined by the Board of Immigration Appeals to fit within the definition of "aggravated felony."

The Sharmas, a father and son, both permanent residents for two decades, were convicted of bank fraud and conspiracy. The Sharmas were found to have schemed to defraud banks of over \$1,500,000 by procuring loans and lines of credit by means of false representations regarding their financial resources.

The father and son were each sentenced to 33 months in jail to be followed by three years of supervised release. They were also ordered to pay \$63,734 in restitution to one of the conspiracy victims, the Department of Public Welfare of the Commonwealth of Pennsylvania.

An immigration judge found the Sharmas deportable and the BIA agreed. The BIA held that the Sharmas' bank fraud convictions under 18 U.S.C. § 1344 were aggravated felonies as defined by Section 101(a)(43)(M)(i) of the Immigration and Nationality Act because the offenses involved fraud or deceit and the record of conviction established that the losses to the victims exceeded \$10,000. The BIA also held that the Sharmas' conspiracy convictions came within the definition of aggravated felony found at INA section 101(a)(43)(U) in that the conviction related to an attempt or conspiracy to commit offenses described in INA sections 101(a)(43)(M)(i) and (ii).

The Sharmas argued to the BIA that their bank fraud conviction did not meet the INA's definition of "fraud and deceit". The BIA found, however, that the plain meaning of the law covered the bank fraud statute under which the Sharmas were convicted.

6. GOVERNMENT PROCESSING TIMES

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

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

Posted on AILA InfoNet at Doc. No. 03022640 (Feb. 26, 2003)

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	2/3/2002
I-129 for H1B classification EOS	10/4/2002
I-129 for H1B classification COS	9/11/2002
I-129 for H2A classification	2/14/2002
I-129 for H2B classification	1/3/2003
I-129 for H3 classification	10/7/2002
I-129 for E classification	7/31/2002
I-129 for L classification	1/21/2003
I-129 for Blanket L petition	2/15/2003
I-129 for O classification	8/8/2002
I-129 for P classification	8/8/2002
I-129 for Q classification	8/8/2002
I-129 for R classification	6/24/2002
I-129 for TN classification	
I-129F (fiancée)	11/22/2002
I-130 for spouse, parent, or child (under 21) of a United States citizen	8/15/2002
I-130 for Unmarried son/daughter (over 21) of a United States citizen	4/5/2001
I-130 for Spouse/Child of a lawful permanent resident	1/20/1998
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	10/6/1999
I-130 for Brother/Sister of United States citizen	4/2/1998
I-131 for Advance Parole	1/15/2003
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)	10/23/2002
I-140 E (skilled worker or professional)	10/22/2002
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	12/11/2002
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	1/9/2003
I-539 for extension of stay for J non-immigrant	
I-539 for extension of stay for L or H non-immigrant	1/7/2003
I-539 for extension of stay for other non-immigrant	1/7/2003
I-539 to change nonimmigrant classification to F or M	1/9/2003
I-539 to change nonimmigrant classification to J	
I-539 to change nonimmigrant classification to L or H	1/7/2003
I-539 to change to other nonimmigrant classification	1/7/2003
I-612 waiver of foreign residence requirement	7/3/2002
I-730 Refugee/Asylee Relative Petition	
I-751 Petition to Remove Conditions on Residence	7/8/2002
I-765 for initial asylee or asylum applicant authorization	Current
I-765 for employment authorization associated with Hurricane Mitch TPS	Current
I-765 for employment authorization associated with El Salvador TPS	Current
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	4/17/2002
I-821 for Hurricane Mitch countries	12/20/2002
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	

Texas Service Center Processing Time Report January 1, 2003	
Form	We are Processing cases with these receipt notice dates:
I-90 to replace lost, damaged or destroyed I-551	4/10/2002
I-90 to renew expiring I-551	n/a
I-102 for replacement/initial nonimmigrant arrival/departure form	8/6/2002
I-129 for H1B classification	9/3/2002
I-129 for H2A classification	current
I-129 for H2B classification	12/11/2002
I-129 for H3 classification	1/7/2003
I-129 for L classification	1/7/2003
I-129 for Blanket L petition	1/7/2003
I-129 for O classification	12/5/2002
I-129 for P classification	1/13/2003
I-129 for Q or R classification Q	Q Current - R 9/04/2002
I-129 for TN classification	n/a
I-129F (fiancée)	10/11/2002
I-129 For E classification	9/3/2002
I-130 for Spouse, Parent or Child of US Citizen	6/8/2001
I-130 for Spouse of Lawful Permanent Resident	4/3/1998
I-130 for Other Relative	4/3/1998
I-131 for Advance Parole	12/4/2002
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)	6/17/2002
I-140 B (outstanding professor or researcher)	6/17/2002
I-140 C (multinational executive or manager)	6/17/2002

I-140 D (professional holding adv. degree/alien of exceptional ability)	8/29/2002
I-140 E (skilled worker or professional)	10/1/2002
I-140 I (National Interest Waiver)	7/18/2002
I-140 G (other worker 3RD PREF)	10/1/2002
I-212 permission to reapply for admission after deportation/removal	n/a
I-360 petition for Amerasian, widow(er), or Special Immigrant	8/1/2001
I-485 Asylum-based	n/a
I-485 Refugee-based	n/a
I-485 Employment-based	11/1/2000
I-485 Haitian Refugee Immigration Fairness Act (HRIFA)-based	n/a
I-526 Immigrant Petition by Alien Entrepreneur	11/15/2002
I-539 for extension of stay for F or M non-immigrant	12/26/2002
I-539 for extension of stay for L or H non-immigrant	n/a
I-539 for extension of stay for other non-immigrant	12/26/2002
I-539 to change nonimmigrant classification to F or M	12/26/2002
I-539 to change nonimmigrant classification to J	12/26/2002
I-539 to change nonimmigrant classification to L or H	12/26/2002
I-539 to change to other nonimmigrant classification	12/26/2002
I-612 waiver of foreign residence requirement	12/26/2002
I-730 Refugee/Asylee Relative Petition	n/a
I-751 Petition to Remove Conditions on Residence	9/13/2002
I-765 for initial asylee or asylum applicant authorization C-8	11/8/2002
I-765 for employment authorization associated with Hurricane Mitch TPS	7/8/2002
I-765 for employment authorization associated with El Salvador TPS	8/1/2002
I-765 for employment authorization while I-485 is pending C-9	10/3/2002
I-765 for all other employment authorization	10/1/2002
I-817 Application for Family Unity Benefits	12/29/1998
I-821 for El Salvador	4/13/2001
I-821 for Hurricane Mitch countries	8/17/1999
I-824 Application for Action on an Approved Application or Petition	8/8/2002
I-829 Petition by Entrepreneur to Remove Conditions	3/22/1999

I-914 Application for T Non-Immigrant	n/a
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Nebraska Service Center Processing Time Report February 15, 2003	
Form	We are Processing cases with receipt notice dates on or before:
I-90 to replace lost, damaged or destroyed I-551	4/6/2002
I-90 to renew expiring I-551	4/4/2002
I-102 for replacement/initial nonimmigrant arrival/departure form	1/24/2002
I-129 for H1B classification	12/12/2002
I-129 for H2A classification	2/1/2003
I-129 for H2B classification	1/14/2003
I-129 for H3 classification	12/26/2002
I-129 for L classification	1/15/2003
I-129 for Blanket L petition	1/10/2003
I-129 for O classification	12/30/2002
I-129 for P classification	1/20/2003
I-129 for Q or R classification	12/5/2002
I-129 for TN classification	1/9/2003
I-129F (fiancée)	9/3/2002
I-130 for spouse, parent or child (under 21) of a United States citizen	5/20/2002
I-130 for son or daughter (over 21) of a United States citizen	4/17/2001
I-130 for brother or sister of a United States citizen	4/17/2001
I-130 for spouse of a lawful permanent resident	4/12/2001
I-130 for unmarried child under 21 of a lawful permanent resident	4/17/2001
I-130 for unmarried son or daughter over 21 of lawful permanent resident	4/17/2001
I-131 for Advance Parole	12/27/2002
I-131 for Advance Parole for HRIFA principal applicant	4/17/2002
I-131 for Reentry Permit	5/21/2002
I-131 for Refugee Travel Document	1/13/2003
I-140 A (extraordinary ability)	10/25/2002
I-140 B (outstanding professor or researcher)	11/19/2002
I-140 C (multinational executive or manager)	12/5/2002
I-140 D (professional holding adv. degree/alien of	11/5/2002

exceptional ability)	
I-140 E (skilled worker or professional)	11/6/2002
I-140 I (National Interest Waiver)	11/29/2002
I-140 G (other worker)	1/1/2003
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	2/4/2003
I-539 for extension of stay for J non-immigrant	2/4/2003
I-539 for extension of stay for L or H non-immigrant	11/28/2002
I-539 for extension of stay for other non-immigrant	10/15/2002
I-539 to change nonimmigrant classification to F or M	11/1/2002
I-539 to change nonimmigrant classification to J	1/3/2003
I-539 to change nonimmigrant classification to L or H	11/26/2002
I-539 to change to other nonimmigrant classification	9/2/2002
I-612 waiver of foreign residence requirement	9/23/2002
I-730 Refugee/Asylee Relative Petition	7/19/2002;
I-751 Petition to Remove Conditions on Residence	5/27/2002
I-765 for initial asylee or asylum applicant authorization	1/7/2003
I-765 for employment authorization associated with Hurricane Mitch TPS	
I-765 for employment authorization associated with El Salvador TPS	8/27/2002
I-765 for employment authorization while I-485 is pending	12/27/2002
I-765 for all other employment authorization	12/2/2002
I-817 Application for Family Unity Benefits	10/17/2002
I-821 for El Salvador	8/27/2002
I-821 for Hurricane Mitch countries	12/23/2002
I-824 Application for Action on an Approved Application or Petition	3/18/2002
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
I-131 HRIFA BLOCK F	1/10/2003
I-485 INDOCHINA	1/27/2003

7. NEWS BYTES

The Board of Immigration Appeals is reportedly laying off five judges as part of a downsizing effort being pushed by Attorney General John Ashcroft. The judges affected are Espenoza, Guendelsberger, Schmidt, Villageliu and Brennan.

The Center for Immigration Studies, a Washington think tank that supports dramatically reduced immigration to the US, has issued a report criticizing the non-immigrant visa policies of the US. The report, entitled "Shortcuts to Immigration: The 'Temporary' Visa Program is Broken" was written by Jessica Vaughan and notes the following major findings:

- 1. The number of temporary admissions has more than tripled since 1985, from 9.5 million to 32.8 million, and the number of non-immigrant visa (NIV) issuances has risen by 30 percent over the same period, even with the adoption of the Visa Waiver Program.*
- 2. The most dramatic growth has been in employment-related categories. In 2001, more than 715,000 foreigners were issued employment NIVs. Another 110,000 non-immigrants received permission to work after arrival.*
- 3. A significant share of "non-immigrants" more accurately should be called "pre-immigrants", though their route to permanent residency is far less controlled than in the standard immigrant visa program. Nearly one-half of the "temporary" categories allow for applicants to have immigrant intent. In 2001, more than 228,000 NIV holders received green cards.*
- 4. In 2001, the United States issued 1.2 million long-term NIVs, an even higher number than were issued green cards (1.1 million). In some categories, their stay may be virtually unlimited.*

While pro-immigration groups would argue that these numbers are a sign of a robust economy that needs to recruit workers from around the globe and also that the US remains the world's top tourist destination, the CIS believes that the non-immigrant visa program provides an entry option for terrorists and illegal immigrants.

8. INTERNATIONAL ROUNDUP

A Federal Court of Canada ruling issued Friday states that Citizenship and Immigration Canada misled and ignored Parliament last year. The federal ministry failed to process a backlog of immigration applicants desperate to get into Canada before strict new standards became policy, according to the decision.

Justice Michael Kelen's ruling will give 102 people a fresh chance to enter Canada and could force the government to reconsider 100,000 others who were

disadvantaged by CIS's ineptitude, critics said. Vancouver immigration lawyer Richard Kurland said he would launch a lawsuit to force the government to reconsider the applicants or pay them a total of at least \$100 million in damages.

Canadian Alliance immigration critic Diane Ablonczy called for the resignation of Immigration Minister Denis Coderre.

Last year Coderre announced that the government would extend the deadline for processing the applicants to March of 2003. The extension was passed under an assumption of the backlog being 30,000 applicants by the first of the year, but evidence established that there will be between 80,000 and 120,000 outstanding at the end of March, Justice Kelen wrote, and the department failed to inform Parliament of the error when it became evident.

Asylum seekers entering Britain increased in number by 20% to about 110,000 last year, the highest ever recorded, according to Home Office statistics published this week. Despite their attempts to bring the crisis under control, the government has failed to stop the numbers from increasing. The figures will prove troubling to Prime Minister Tony Blair, who promised the numbers would be halved by September. His plan was to cut the social security payments to half the asylum seekers, but the high court ruled the law broke the European convention on human rights. One of the factors contributing to the double digit increase is the number of those coming from Iraq, making up 19% of the total number of asylum seekers in the third quarter.

Mohammad Ihsan Mutmain, a former Taliban government official with links to Mullah Mohammed Omar, has been living in Britain for nearly two years after being granted asylum by the Home Office. Mutmain is a former kung fu champion who served on Afghanistan's Olympic committee and obtained a visa by claiming he was taking part in a sports competition there. He applied for refugee status upon arrival. Mutmain is one of five people who were a part of the Taliban regime and have been given permission to stay in Britain. Members of the transitional Afghan government have expressed their disappointment with the Home Office for giving sanctuary to former Taliban fighters who should face justice in their home country.

The Japanese Government plans to relax the requirements to be fulfilled by foreign nationals seeking refugee status. The bill will incorporate a provision that would permit foreigners to stay in the country as residents for a certain period if they apply for refugee status within six months of their arrival. The bill also requires that applicants enter Japan directly from the country where they expect to be persecuted and have no criminal record. Current laws require refugee-status requests to be made within 60 days of arrival in Japan. The law is set to be revised for the first time since Japan adopted a system for recognizing refugees in 1982.

Congress has repealed a Section of the Homeland Security Act of 2002 that dramatically cut INS filing fees. Congress had removed the budget authorization for the INS surcharges to support refugee and asylum processing. Congress recently repealed that change and the INS has now announced in the Federal Register the immediate restoration of filing fees to their earlier levels. Earlier concerns that the INS would try and charge people who filed cases before the Federal Register announcement the difference between the reduced fee and the current fee appear to be unwarranted.

Effective February 27th, all fees must now be the higher level.

On a related note, as of this weekend, filing fee checks may be made out to either the Immigration and Naturalization Service or the Bureau of Citizenship and Immigration Services.

10. BUSH ADMINISTRATION DENIES OFFERING MEXICO IMMIGRATION DEAL IN EXCHANGE FOR IRAQ VOTE

Former U.S. Ambassador to the United Nations Bill Richardson suggested last week that the White House may be offering an amnesty deal to Mexico in return for supporting its position on Iraq. An article in the French daily Liberation claimed the Bush administration had offered a direct deal on immigration. White House spokesman Ari Fleischer denied any such suggestions, saying that President Bush "is not offering a quid pro quo" and that Mexico would judge the situation on its merits alone. U.S.-Mexico relations have been somewhat strained since September 11; in the months before the terrorist attacks, Mr. Bush and President Fox had been working on a deal to deliver amnesty to Mexicans working illegally in the United States. He did note, however, that the President is in favor of an immigration deal anyway, thus suggesting that should a deal happen after Mexico votes with the US, that the Administration can claim this to be just a coincidence.

Mexico has one of the seats on the United Nations Security Council. The US is said to be working behind the scenes as much as possible in support of a new resolution that will pave the way for an American invasion of Iraq.

Fox has been lukewarm to the US' talk of war with Iraq. "We support multilateral efforts to reach the elimination of weapons of mass destruction in Iraq, and for that nation to comply fully with the resolutions approved by the United Nations Security Council," Fox recently told a group of American and Mexican businessmen. He has said in the past that he favors a UN-led diplomatic approach to Iraq. Fox's position is consistent with the Mexican public's views. A recent poll in that country showed 83% opposing the US position.

The following is the transcript from the White House press briefings on February 26th and 27th where Press Secretary Ari Fleischer addressed the controversy:

"Q: Ari, in Mexico, the President will continue to call President Fox to pressure him to change his mind against -- and to vote in the Security Council? What Mexico can get from the United States if it votes yes for the resolution that was presented by this country?"

MR. FLEISCHER: First of all, this entire matter will be dealt with in a matter of diplomacy and logic and expressions of our position. And nations then will be in a position as sovereigns to evaluate that information. This is why the Security Council is set up with 10 members who rotate on to the Council. This is a moment for 10 nations that would not typically be on the Security Council to have their moment, as part of the international community's regimes to enforce peace and to fight proliferation.

Q: But Mexico can get something from the United States, from the President --

MR. FLEISCHER: This is a time -- no, the President is not offering quid pro quos. This is a time for nations to do what they estimate is the right thing to do to promote the peace.

Q: Ari, just to follow up on Mexico. Is it true that the administration is willing to give Mexico some sort of immigration agreements like amnesty or guest worker program, to assure the Mexican vote, as the French press is pointing out today and is quoting, actually, two different diplomats from the State Department?

MR. FLEISCHER: No, it's exactly as I indicated, that we have, on this issue, a matter of diplomacy and a matter of the merits. We ask each nation on the Security Council to weigh the merits and make a decision about war and peace. And if anybody thinks that there are nations like Mexico, whose vote could be bought on the basis of a trade issue or something else like that, I think you're giving -- doing grave injustice to the independence and the judgment of the leaders of other nations.

Q: -- the French press is quoting actually two different diplomats from the United States State Department that -- they're highlighting that the United States is giving some sort of agreements or benefits to Colombia -- and other non-members of the Security Council --

MR. FLEISCHER: I haven't seen the story. And you already have the answer, about what this will be decided on. But think about the implications of what you're saying. You're saying that the leaders of other nations are buyable. And that is not an acceptable proposition. (Laughter.)"

From February 27th:

"QUESTION: Does the administration view immigration reforms or other things that are on the binational agenda tied to their support in the U.N.?"

MR. FLEISCHER: The President has always viewed immigration reforms, such things as family unification, as an important priority for the United States.

QUESTION: Is it tied to their support in the U.N.?"

MR. FLEISCHER: They are, in and of themselves, important and worth goals. And with or without Iraq, the President would be pushing them, as you know. He began his term pushing them, and he intends to continue to push them and hope the Congress will agree. This, at all times, would be good times for Congress to agree to family reunification.

[...]

[End]"

11. INS OFFICIAL INDICTED IN FAKE MARRIAGE SCHEME

An official of the Miami Immigration and Naturalization Service office and a paralegal matchmaker are being charged in a scheme to help hundreds of illegal aliens gain green cards through sham marriages. Jose Luis Cintron and his partner in the scheme allegedly charged \$5,000 to \$10,000 to each immigrant. Cintron would conduct the green card interview and apply a loose standard to ensure the application was successful.

Cintron and Rico's activities were discovered when investigators used a police informant who posed as a potential customer. Rico allegedly provided false bills and other evidence to show a couple was living together. The informant then met his "sham" wife and Cintron at the house of Rico. The informant paid the spouse \$3000, \$3000 to Cintron and \$4000 to Rico.

INS agents raided Cintron's home as well as the home office of paralegal Guillermo Rico and recovered more than \$200,000 in cash and checks. He earns \$50,000 a year in his job.

Cintron has been arrested and released on a \$150,000 bond. According to prosecutors, he has been involved in at least 500 cases since 1999 and the INS is now reviewing every single case he worked on to see which were legitimate and which were not..

Both Cintron and Rico are scheduled for arraignment on March 10th.

12. TEMPORARY PROTECTED STATUS FOR ANGOLANS TO END

The Department of Justice has announced that nationals of Angola will be terminated from the Temporary Protected Status (TPS) program. TPS status will end for Angolans on March 29, 2003. 316 people are expected to be affected.

The Justice Department found that the situation in Angola had changed. The armed conflict that originally served as the basis for the TPS designation no longer exists and Angolans can safely return to their country.

Upon termination of TPS status, individuals will revert back to the status they had just prior to getting TPS status unless that status has expired or they will revert to any other status they may have gained while registered for TPS. If the individual had no status prior to being granted TPS, they are subject to removal.

Work authorization for Angolans with TPS expires on March 29, 2003 and will not be renewed. And anyone remaining beyond that date who is not in status will begin accumulating unlawful presence.

The Justice Department memorandum announcing the end of TPS designation notes that Angolans fearing a return to their country can still apply for asylum, withholding of removal or protection under the Torture Convention.

13. JUSTICE DEPARTMENT REPORT SHOWS INS IS FAILING IN REMOVING DEPORTED ALIENS FROM THE US

The Department of Justice's Office of Inspector General has issued a report noting that most aliens facing removal orders from the US are not ultimately removed by the INS when they are not detained. Only 13% of immigrants ordered removed who are not detained by the INS actually leave, according to the OIG. But when the INS actually detained a person, the rate of actual removal jumps to 92%. According to the report, immigrants ordered removed

- from countries that the U.S. Department of State identified as sponsors of terrorism – only 6 percent of those ordered removed were actually removed,
- with criminal records – only 35 percent of those ordered removed were actually removed, and
- who were denied asylum – only 3 percent of those ordered removed actually left.

The OIG was especially blunt in criticizing the INS for not following recommendations from an earlier report that were intended to address this problem.

For example, the INS agreed to improve its methods of notifying aliens of their duty to surrender for removal. The INS published a proposed rule, but allowed it to lapse. After September 11th attacks, the INS revived the rule. As of last month, the rule was still not finalized.

According to the OIG, the INS agreed to conduct field tests to target for removal all aliens with final orders. They told the OIG that a pilot project in Philadelphia had gone well. However, the INS was not able to provide any information regarding the pilot project in Philadelphia or other locations and they could not locate anyone who could remember the projects.

The INS contracted with the Vera Institute of Justice to conduct a demonstration project to examine whether a supervised release program could improve court appearance rates for asylum seekers, criminal aliens, and undocumented workers. The final project report was issued on August 1, 2000, but as of December 2002, the INS had not acted on it or implemented any alternative actions to improve the removal rates for nondetained aliens.

And finally, according to the report, the INS agreed to use an FY 1996 budget enhancement of \$11.2 million to fund 142 positions to remove alien absconders. It also agreed to use the INS's Law Enforcement Support Center to enter alien absconder information into the National Crime Information Center (NCIC) and develop an automated list of criminal absconders for the law enforcement community. However, the INS did not establish absconder removal teams or develop an automated list of absconders until after September 11, 2001. Moreover, the INS was unable to document how it used the \$11.2 million.

The report can be found online at <http://www.usdoj.gov/oig/inspection/I-2003-004/final.pdf>

14. LEGISLATIVE UPDATE

Federal Reserve Chairman Alan Greenspan, one of the most influential leaders in Washington, testifying in front of the Senate's Special Committee on Aging, argued that substantial immigration must be part of the solution to the crisis the country faces as its population ages. Greenspan told the Senators that "an aging US population presents "daunting challenges" for the future that potentially imperil the country's Social Security safety net." He also said "there would be "significant effects" from a rapidly aging population on government finances... In particular, it makes our Social Security and Medicare programs unsustainable in the long run, short of a major increase in immigration rates, a dramatic acceleration in productivity growth well beyond historical experience, a significant increase in the age of eligibility for benefits or the use of general revenue to fund benefits... "As the influx of foreign workers in response the tight labor markets of the 1990s showed, immigration does respond to labor shortages and immigration offers some offset to an aging population."

* * *

Several bills were introduced in Congress over the last month. Among them are the following:

- H.R. 605, sponsored by Rep. Major Owens (D-NY), would grant deferred enforced departure status to parents of children under age 18 who were born in the US
- H.R. 539, sponsored by Rep. Robert Andrews (D-NJ) would allow spouses of lawful permanent residents to be treated as immediate relatives so they can process for green cards like spouses of US citizens
- H.R. 775, sponsored by Rep. Bob Goodlatte (R-VA) would abolish the green card lottery program
- H.R. 832, sponsored by Rep. Gerald Nadler (D-NY) would create a mechanism for US citizens and permanent residents to sponsor domestic partners for permanent residency

To see what other immigration-related legislation is pending in Congress, visit our legislative chart at www.visalaw.com/advocacy.html.