

SISKIND'S IMMIGRATION BULLETIN
January 10, 2003

E-mail subscribers as of 10 October 2001: 30,159 persons (50 states/144 countries).
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SSHD serves immigration clients throughout the world from its offices in the US,
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1. OPENERS

Dear Readers:

This week we are back from the holiday season with a full issue. In addition to our regular features, we have stories on a lawsuit attempting to stop arrests during special registrations, new rules on passenger manifests and an update on the new student tracking system. We also feature a court case holding that a recent Social Security Administration policy change on issuing numbers to nonimmigrants so they can obtain a driver's license was improperly done and therefore unenforceable.

In addition, we cover an INS policy change that will allow registered nurses to immigrate without having a license if the only reason they cannot get a license is that they do not have a Social Security number. Finally, we cover a report on the ship-jumping incident in Norfolk, Virginia last March in which four crewmembers were improperly allowed to leave their ship.

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,

Amy Ballentine

2. THE ABC'S OF IMMIGRATION – RENEWING AND REPLACING GREEN CARDS

Individuals granted lawful permanent residence in the United States receive Form I-551, commonly known as a Green Card. This card is evidence that an individual has the right to live and work permanently in the United States. Currently, an I-551 remains valid for a period of ten years. Consequently, if an individual remains a permanent resident for more than ten years, the resident will be required to renew the I-551.

Permanent residents can commence the process of renewing an I-551 within six months of the card's expiration date. Applicants request a renewal by submitting a Form I-90 along with the following:

- The prior I-551
- \$130 fee
- 2 identical color photographs developed within 30 days of the application. The photos, with a three-quarter frontal profile, can be no larger than 2X2 inches. The residents A# should also be lightly printed on the back of each photo.

For a majority of I-551 renewals, the application should be submitted to the appropriate INS Application Support Center (ASC) serving the resident's local area. Information regarding local ASCs can be located at <http://www.ins.gov/graphics/fieldoffices/ascs/asc.htm>. If an individual resides in an area where the ASC does not accept I-90s, the resident should contact the local INS office or call the National Customer Service Center at 1-800-375-5283 for filing instructions. If a resident is outside of the United States when the I-551 expires, the individual should contact an American Consulate, INS office, or Port of Entry before attempting to file an I-90.

Besides applications for renewals due to a card's expiration, permanent residents may utilize an I-90 to request a new I-551 for any number of reasons including losing the I-551 or changing one's name. If the card is unavailable, the resident should submit evidence of identity. If the purpose for the new I-551 is a biographical change, the resident should also submit evidence of the modification in the application.

3. ASK VISALAW.COM

Greg Siskind, who writes our Ask Visalaw.com column, has been out of the office on business this week, and the column will return next week.

4. BORDER NEWS

Just before New Year's Eve, the FBI announced a national search for five men who had allegedly been smuggled into the US from Canada as part of a terrorist plot. Within a week, however, officials announced that the story was made up by a man in jail in Canada on charges of trafficking in fraudulent passports and stolen traveler's checks. John Michael Hamdani told Canadian officials that a large group of Pakistanis had entered the US with fraudulent passports, and after administering a lie detector test, the Canadian government relayed the information to the US. Officials say that while the alert was withdrawn, some of the information Hamdani provided was accurate and led to the break up of an immigrant smuggling ring responsible for bringing at least 40 Pakistani nationals into the US from Canada. The ring had been in operation since 1997, charging people between \$15,000 and \$30,000. Officials say that the ring does not appear to have any connection to terrorist activities, but that investigations are continuing.

On January 1, nine undocumented immigrants died in Iowa when the truck they were riding in crashed. Officials say the single car crash occurred because the truck was overloaded and traveling at an excessive speed.

The number of people attempting to enter Puerto Rico without authorization has skyrocketed over the past few months. Puerto Rico, a US territory, is covered by all US immigration laws. Between October and December, 1,203 people have been apprehended, compared with 61 people during the same period the previous year.

5. NEWS FROM THE COURTS

In re M-D-, Board of Immigration Appeals

The respondent, a citizen of Guinea, entered the US without permission in February 2000, and in November 2000 filed an application for asylum. The application was referred to an immigration court, which issued a notice to appear for deportation proceedings and setting a time for a hearing. This notice was sent by certified mail to

the address listed on the asylum application. Numerous attempts were made to deliver the notice, but it was returned unclaimed. The respondent did not appear at the hearing, and the immigration judge ordered him deported. After receiving the deportation notice, the respondent filed a motion to reopen the proceedings, arguing that he never received notice of the hearing. The motion was denied, and the respondent appealed.

On appeal, the respondent argued that he never received any correspondence from the immigration court, and that service by certified mail violates due process. The Immigration and Nationality Act allows service in deportation proceedings to be made either in person or sent by mail. The method of mailing is not specified. Service does not actually have to occur so long as the INS can show the person can be charged with having received the notice. The Board found that where service was attempted by certified mail, there is a rebuttable presumption that adequate notice was given. The Board also found that the respondent failed to rebut this presumption. He did not allege that the notice was sent to the wrong address, and the Board found that his failure to respond to Post Office notices was the primary cause for not receiving the notice. The Board also rejected the respondent's argument that the use of certified mail violated due process. Therefore, it affirmed the deportation order.

6. GOVERNMENT PROCESSING TIMES

Texas Service Center Processing Times

Jurisdiction: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee and Texas.

01/01/2003

Application/Petition Type	Date Based on Pending Initial Adjudication
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 / H1B	8/21/2002
I-129 / H2A	current
I-129 / H2B	11/27/2002
I-129 / H3	12/20/2002
I-129 / L	12/20/2002
I-129 / Blanket L	12/20/2002
I-129 / O	10/25/2002
I-129 / P	10/20/2002

I-129 / Q or R	Current - R 7/23/2002
I-129 / TN	n/a
I-129F (fiancée)	10/11/2002
I-129 / E	7/15/2002
I-130 / Spouse, Parent or Child of US Citizen	6/8/2001
I-130 / Spouse of Lawful Permanent Resident	4/3/1998
I-130 / Other Relative	4/3/1998
I-131 / Advance Parole	12/4/2002
I-131 / Advance Parole for HRIFA principal applicant	n/a
I-131 / Reentry Permit	n/a
I-131 / 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 / extension of stay for F or M non-immigrant	12/6/2002
I-539 / extension of stay for L or H non-immigrant	12-26 or date of I-129
I-539 / extension of stay for other non-immigrant	12/26/2002
I-539 / change nonimmigrant classification to F or M	12/26/2002

I-539 / change nonimmigrant classification to J	12/26/2002
I-539 / change nonimmigrant classification to L or H	12-26 or date of I-129
I-539 / change to other nonimmigrant classification	12/26/2002
I-612 waiver of foreign residence requirement	9/17/2002
I-730 Refugee/Asylee Relative Petition	n/a
I-751 Petition to Remove Conditions on Residence	9/13/2002
I-765 / initial asylee or asylum applicant authorization C-8	10/31/2002
I-765 / employment authorization associated with Hurricane Mitch TPS	7/5/2002
I-765 / employment authorization associated with El Salvador TPS	8/1/2002
I-765 / employment authorization while I-485 is pending C-9	9/21/2002
I-765 / all other employment authorization	9/13/2002
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

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

7. NEWS BYTES

Late last year officials made three arrests as part of the break up of a fraudulent immigration document ring. Undocumented immigrants were sold the documents and told they were authentic. One of those arrested was an INS inspector, accused of threatening immigrants who complained after realizing they had paid for fraudulent documents. The arrests followed a nearly year long investigation.

A former INS inspector is on trial on charges of defrauding Chinese immigrants in New York City. Tin Yat Chan is accused of posing as an INS official and as an attorney, promising immigrants that he could use connections at the US Embassy in

China to help relatives obtain permission to come to the US. Chan was convicted in 1993 of extorting Chinese asylum applicants, after which he lost his job with the INS.

Seven immigrants were recently arrested on charges of using false information to obtain employment at Sikorsky Aircraft in Connecticut, and more arrests are expected. Sikorsky manufactures helicopters for the US military. None of those arrested are believed to have misused their security clearances, but officials say that any such identification fraud is a threat to national security.

Investigators have discovered that a number of Border Patrol agents have been ripping off the federal government by submitting inaccurate requests for reimbursement. Officials say that vendors assisted in the fraud by providing incorrect receipts.

John Allen Muhammad, one of the two men accused in last year's sniper attacks near Washington, DC, made more than \$60,000 forging and selling US identification documents during the year he spent in Antigua, according to a report from the Antiguan government. The report says that he sold at least 20 sets of driver's licenses and birth certificates, and in many cases accompanied those who bought the documents to the US.

Following a recent announcement by the INS that it was ordering Cheryl Little, the director of the Florida Immigrant Advocacy Center, to close her office in the Krome Detention Center, a number of Florida legislators have spoken out in Little's behalf. The INS says it will further discuss the matter, but that it plans on opening a room at the facility that can be used by all legal representatives.

A review by the Los Angeles Times of cases decided by the Board of Immigration Appeals shows that since regulations aimed at increasing the speed with which the Board disposes of cases were first suggested last February, the number of cases decided by a single Board member with only a summary decision has increased substantially. According to the survey, in the month before the new regulations were released, summary decisions were issued in only nine percent of cases, while in the month after the number had risen to 38 percent. By the time the rule went into effect in September, nearly half of the Board's rulings were summary decisions. Some Board members are issuing more than 50 decisions a day, which leads advocates to question what kind of attention these cases are being given. At the same time, the number of cases in which the Board rules against the immigrant has also gone up by more than 20 percent.

The US Embassy in Caracas, Venezuela has closed both the immigrant and

nonimmigrant visa units to all routine applications. After January 20, only applications from diplomats, spouses and minor children of US citizens, and emergency humanitarian and medical cases will be accepted. Appointments that have already been scheduled for dates after January 20 will not be held, and will be rescheduled for a later time.

A Mexican national who was arrested attempting to reenter the US was found to have used fraudulent documents to obtain employment with a company that did work on White House grounds. Officials say that Salvador Martinez-Gonzalez worked as a supervisor for a company that provided tents and other items for special events.

The Equal Employment Opportunity Commission has filed a lawsuit against a Tulsa, Oklahoma oil equipment manufacturer, claiming that it exploited foreign workers. According to the complaint, about 50 Indian workers at the John Pickle Co. were forced to work long hours for low pay, prevented from leaving the worksite and threatened with deportation if they complained. The company says that the immigrants were trainees, not employees, and that they had agreed to the terms and conditions of their positions before coming to the US. The company closed last September, in large part because of adverse publicity surrounding this case. The Labor Department has also filed a complaint against the company, and the Occupational Safety and Health Administration is investigating.

A San Jose couple is facing 33 felony counts based on allegations that they ran several immigration services offices where they defrauded undocumented immigrants out of thousands of dollars. Noel Ramayrat and Mercedes Alcantara were arrested and held with bail set at \$2 million each. Officials say that Ramayrat presented himself as an immigration attorney and filed applications that had little chance of approval.

Twenty people recently pled guilty to charges of marriage fraud in South Carolina, the third group to do so after the INS investigation Operation Broken Vows uncovered a massive marriage fraud scheme. At total of 221 people were charged, and 56 have already pled guilty. US citizen women were paid between \$1,000 and \$1,500 for their participation. None of the marriages were consummated, and the men seldom even lived in South Carolina. The maximum penalty for marriage fraud is five years in prison and a \$250,000 fine, but officials do not expect any of the women will be sentenced to that long of a term. The men involved will all be deported.

Rabih Haddad, the founder of an Islamic charity who was arrested in December 2001 after officials accused his charity, Global Relief Foundation, of providing money to terrorist groups, recently appealed his deportation order. Haddad applied for asylum, which was denied, and he was ordered deported for overstaying his visa. Haddad's

case was prominent in the battle over closed immigration proceedings in the wake of the September 11th attacks, with the Sixth Circuit Court of Appeals eventually ruling that the hearings had to be open to the public. The government had claimed that open hearings would provide information terrorists could use, but neither Haddad nor Global Relief has ever been charged with any terrorism-related offense.

While news of the arrests of many Iranian citizens in Los Angeles dominated concerns over special registration, around the country similar arrests were occurring. In Denver, Colorado, six students at area universities were arrested for not taking full course loads, even though they had college permission to take a reduced number of classes.

Catholic bishops in Florida this week called on President Bush to release more than 200 Haitian asylum seekers from INS custody. Calling their detention "indefensible," the bishops also expressed concern about whether those detained have adequate access to legal assistance. Bishops seldom make official statements about public policy, making their condemnation of the government for failing to "articulate a compelling moral or security-based rationale" for the detention especially striking.

More than a year ago, the INS launched the Absconder Initiative Program, aimed at locating and deporting immigrants who had been ordered deported but fled. Despite much publicity, the initiative has not located many of the approximately 300,000 fugitives. The INS is not releasing much information about its efforts, but it appears that fewer than 2,000 absconders have been located. An INS spokesperson says the agency never intended to search for anyone but those from countries with an Al-Qaeda presence, and that 1,100 of those people have been arrested. Rather than look for the absconders, the INS is entering their names into the National Crime Information Center database, which is used by 80,000 different law enforcement agencies. It is hoped that these agencies will call the INS if they come across someone listed in the database. The INS also points out that the vast majority of the absconders were ordered deported because of immigration violations, not crimes.

8. INTERNATIONAL ROUNDUP

Mexico's Foreign Relations Secretary To Resign

Jorge Castaneda, Mexico's Foreign Relations Secretary, has decided to step down from the post, according to government officials interviewed Wednesday.

Castaneda had angered Cuba's Fidel Castro with his pro-US policies and with Mexico's vote in favor of a UN human rights resolution targeting Castro's government. Castaneda had long been under pressure from lawmakers who called from him to be fired, but he had a good relationship with President Vicente Fox during his two years in the office.

Britain Adopts Tougher Asylum Rules

This week Britain introduced tough new immigration measures designed to combat abuse of its support and benefits system in an effort to shed its image as being too soft on asylum seekers.

Under the new rules, immigrants making asylum claims in Britain must explain how they entered the country and why they didn't claim at the port of their arrival. They will also have to make a case showing eligibility for benefits, and will have a slim chance of being granted permission to remain in Britain if their claim is rejected.

Immigration Minister Beverley Hughes said the move was needed to prevent immigrants from claiming asylum after working in the country illegally.

9. NEW INS POLICY EASES IMMIGRATION FOR NURSES

The INS recently issued a memo on processing immigration applications for foreign nurses who are not able to obtain social security numbers. Under the new policy, nurses who have passed the National Council Licensure Examination for Registered Nurses (NCLEX-RN) will not have to have passed the Commission on Graduates of Foreign Nursing Schools (CGFNS) examination or possess a license to qualify for immigration.

Registered nurses are on the Department of Labor's Schedule A for labor certifications, which means that the job is pre-certified as a shortage occupation, and that a labor certification recruitment campaign need not be conducted. Many nurses enter the US as visitors to take the NCLEX-RN exam, which is offered only in the US. After passing the exam, they receive a letter from the state informing them that they will be granted a license after they present a valid social security number. However, because of their nonimmigrant status, the Social Security Administration will not issue a number. Without a license, the nurse does not meet the requirements for the Schedule A labor certification.

Last October, the Department of Labor instructed the INS to accept documentation of successful completion of the NCLEX-RN exam, along with a letter from the state confirming this, and stating that they are eligible to be licensed but for the lack of a social security number. Therefore, the INS will now approve I-140 petitions without requiring a state nursing license.

10. LAWSUIT SEEKING TO STOP SPECIAL REGISTRATION ARRESTS DISMISSED

In response to the numerous detentions that occurred during the implementation of the Special Registration program, a group of immigration advocates filed a lawsuit against the Attorney General and the Immigration and Naturalization Service on December 24, 2002. The lawsuit, filed in the Federal District Court for the Central District of California, names ten total plaintiffs, six anonymous John Does and four Arab and Muslim groups, the American-Arab Anti-Discrimination Committee, the Alliance of Iranian Americans, the Council on American Islamic Relations, and the National Council of Pakistani Americans.

Through the lawsuit, the plaintiffs asked for two primary forms of relief. First, the plaintiffs seek an injunction preventing the Government from conducting warrantless arrests against individuals participating in special registration. Second, the lawsuit requests that INS be prevented from a) deporting and/or b) detaining without bail individuals who have a potential means to becoming legal immigrants in the United States. Of note, because of the large number of individual who may have claims against the Government, the lawsuit also requests that this case be granted class action status.

Immigration advocates have emphasized that this lawsuit does not challenge the Government's ability to conduct a registration process. The issues raised in the filed complaint pertain to the current procedures and implementation of Special Registration.

Government attorneys filed their response to the complaint on Thursday, December 26. The attorneys argue that the lawsuit should be thrown out of federal district court for lack of jurisdiction since the U.S. Supreme Court is the sole judicial body with the authority to review INS detention decisions. The response also states that the requested temporary restraining order regarding deportations and detentions should not be granted to the John Doe aliens in the lawsuit. The judge hearing the case ruled that the plaintiffs failed to make a case and dismissed the lawsuit, allowing the INS to continue with its Special Registration procedures.

Special Registration is a new procedure instituted by the INS to track the entries and exits of designated nonimmigrants. Individuals subject to special registration must fulfill certain requirements including making an appearance at an INS office to register.

Immigration lawyers estimate that as many as 1,000 men, who voluntarily appeared at INS for a special registration interview, were detained by the INS. Officially, the Justice Department has stated that less than 250 people were detained in the state of California.

11. RECENT COURT CASE FINDS NEW SOCIAL SECURITY NUMBER POLICY UNENFORCABLE

Iyengar v. Barnhart, District Court for the District of Columbia

Several nonimmigrants residing lawfully in the US filed a lawsuit challenging a new Social Security Administration policy of not issuing social security numbers solely for the purpose of obtaining a driver's license. The plaintiffs claimed that because they cannot obtain SSNs, they cannot obtain driver's licenses, and sought an injunction against the SSA to prevent it from enforcing the new policy. At this point, before the court were the plaintiffs' motion for summary judgment and the defendants' motion to dismiss the case.

SSNs are used primarily to verify that a person is eligible to work and to track their earnings. Nonimmigrants who are authorized to work may obtain numbers. SSA regulations also allow the issuance of SSNs to anyone legally in the US, not authorize to work, but who needs the number for a "valid nonwork purpose." Under this provision, for many years the SSA has issued numbers so that people may obtain

driver's licenses if the state requires one for a license. The SSA policy change was made internally, without being published in the Federal Register any without opportunity for public notice and comment. This, the plaintiffs argued, violated laws dealing with how government agencies are to introduce new regulations.

The SSA argued that the new policy was only an interpretative rule, and thus not subject to the notice and comment procedure. The court found that even if this was the case, because the new rule changed policies that had been announced in the Federal Register, the new rule had to go through the same process. Therefore, the court granted the plaintiffs' motion for summary judgment and found that the SSA had violated rule-making procedures in the way it introduced the new rule.

The case is available online at <http://www.dcd.uscourts.gov/02-0825.pdf>.

12. MORE DEVELOPMENTS IN STUDENT TRACKING PROGRAM

In a late December meeting between the INS and NAFSA: Association of International Educators, various issues relating to SEVIS, the new electronic tracking system for F, J and M non-immigrant students and exchange visitors, were discussed and a few key announcements were made by INS regarding implementation of the new program.

First, NAFSA asked the INS to clarify whether J-2 spouses can or cannot study while in the US without having to secure a separate student visa. The INS did not include such a provision in its rules implementing SEVIS. But the State Department did mention such a restriction in its preamble to its new SEVIS rule. The INS indicated that it had discussed the issue with the State Department and that the State Department intended that full-time study would not be permitted for J-2s except by J-2 dependents in Kindergarten through 12th grade programs. The State Department has told the INS that it intends to note this in the final regulations and that they will coordinate with the INS on this.

NAFSA notes that until the corrections to the regulations are made, there is no restriction on studying by J-2 dependents. It also is urging its members to comment on this rule by the January 13th deadline.

Another issue discussed was the requirement that J program sponsors report in SEVIS an exchange visitor's participation within 30 days of the start date of the program or within 30 days of the visitor's inspection at a port of entry. NAFSA inquired about what would happen if the exchange visitor enters the country, for example, two months after the start date. According to the INS, the SEVIS record will be cancelled unless the program participation is confirmed in SEVIS within 30 days of the program participant's entry. If the visitor arrives after the start date on the DS-2019 form (the new version of the IAP-66 form), the visitor will likely be given an I-515 form upon admission. When the program knows that the visitor will not be arriving by the start date on the DS-2019, the exchange program can go into SEVIS and update the program start date before the visitor enters. The INS recommends issuing a new DS-2019 for the visitor if possible. NAFSA reminds its members that the visitor cannot enter more than 30 days ahead of the start date on the DS-2019.

NAFSA asked the INS to clarify whether a DS-2019 issued by a non-SEVIS exchange program prior to January 30, 2003 can be used for applying for a visa and admission prior to August 1, 2003. The INS noted that this is permissible. But after January 30th, continuing exchange visitor can no longer use the pink copy of the form alone to obtain a new visa. Instead, a new SEVIS-issued DS-2019 would be needed unless the visitor had been issued a non-SEVIS DS-2019 form prior to January 30, 2003.

The INS mentioned to NAFSA that the State Department is advising exchange programs to continue entering information into ISEAS, the interim student and exchange visitor information tracking system, until ISEAS is no longer available on the State Department web site. After that date, the State Department's Consular Affairs office will continue to have access to the data.

The INS warned SEVIS that it is proceeding with plans to tinker with the rules regarding the duration of status designation F, J and I non-immigrants. Within the next six months, the INS will begin discussions on the use of duration of status for F and J non-immigrants. The INS did not elaborate except to say that any proposal would be presented as a proposed rule and that until a final rule is issued, it will continue to admit Js under duration of status. The INS did not address the immediate future of duration of status designations for F-1 and M-1 visas.

NAFSA addressed a provision of the SEVIS regulations that states the following: "If the student is not required to take any additional courses to satisfy the requirements for completion, but continues to be enrolled for administrative purposes, the student is considered to have completed the course of study and must take action to maintain status. Such action may include application for change of status or departure from the U.S.". NAFSA asked if the INS really meant this to apply to Masters and Ph.D. students who complete coursework but have not begun research and writing a dissertation. The INS confirmed to NAFSA that the rule was not intended to apply to MA/Ph.D. students. Instead, the rule is intended to apply to individuals who completed all requirements for graduation.

The INS also told NAFSA that 3,232 had submitted I-17 applications to be re-authorized to issue I-20s under SEVIS. Another 169 schools have petitions in "draft" status. 2300 schools out of the 3,232 submitted applications by the 11/15 deadline and those schools' petitions have been submitted to contractors for handling. So far, 1,596 schools have been approved for SEVIS enrollment and the INS expects to complete the enrollment process by the January 30th start date. Schools who filed their SEVIS I-17 forms by November 15 who have not heard from a contractor by now should send an email to HQADN-SEVP@usdoj.gov.

13. JUSTICE DEPARTMENT REPORT FAULTS INS IN CREW DESERTION INCIDENT

A report from the Justice Department Office of the Inspector General says that the officer in charge of the Norfolk, Virginia INS office was responsible for errors that allowed four Pakistani nationals to leave the ship where they worked. The four men deserted after being allowed off the ship, sparking a nationwide manhunt last March. Two of the men were later arrested, but the other two remain at large.

According to the report, the inability of the INS to properly distribute new policy guidelines led to the incident. The officer, William Bittner, was never informed of a change in policy that changed the procedures for allowing crewmembers to leave

their ships. Bittner claimed to have never received notice of the policy change. In fact, the Norfolk office was never given a written notice of the change. His supervisor insisted that she had mailed the notice, and that she and Bittner discussed the changes.

The report concludes that the INS needs to develop more effective methods of distributing new policies.

14. NEW INS RULE WOULD REQUIRE MORE INFORMATION ON PASSENGER MANIFEST LISTS

The Immigration and Naturalization Service has released a proposed regulation implementing a section of the Enhanced Border Security and Visa Entry Reform Act of 2002 that calls for airlines and ships (except certain ferries) to electronically transmit passenger and crewmember information to US border officers before they arrive in the US and before they leave the US.

The proposed rule also requires the airlines and ship lines to collect specific information on each passenger and crewmember that the INS says is necessary for the proper identification of passengers. Unlike the current rules, the lists will include information on ALL passengers including US citizens and permanent residents.

In 1989, the US government launched APIS - the Advance Passenger Information System. Airlines and ship lines collect information from a passenger's passport, visa and any other travel document and submit the data electronically to the INS and US Customs Service. The system has been voluntary and participating carriers are guaranteed faster processing upon arrival in the US. 140 carriers now participate in the program. The new rule will expand APIS.

One thing that will change is the specific data collected. More information will be transmitted to the US government than under current APIS rules. The new rule calls for the collection of the following information:

- Complete name
- Date of birth
- Citizenship
- Gender
- Passport number and country of issuance
- Country of residence
- US visa number
- Date and place of visa issuance
- Alien number
- US address while in the US

Certain information will not be required if, for example, a passenger is exempt from passport or visa requirements.

Under the new rule, air carriers will have to transmit the identification data no more than 15 minutes after the time of departure. Ships have the following rule:

(1) ships on voyages of 96 hours or more must submit the information required in the crewmember and passenger manifests at least 96 hours before entering the port or place of destination;

(2) ships on voyages of less than 96 hours but not less than 24 hours must submit the crewmember and passenger manifests not less than 24 hours before entering the port or place of destination;

(3) and ships on voyages of less than 24 hours must submit the crewmember and passenger manifests prior to departing the port or place of departure.

Beginning on January 1st of this year, carriers no longer need to send collected I-94 cards to the INS if they are electronically submitting information required under the new law. Passengers will still complete I-94 cards so that INS inspectors can compare the information provided by the passenger to the information transmitted by the carrier. I-94s are also necessary since passengers do not necessarily come and leave from the same places and with the same carriers.

The rule has received little comment from immigrant rights group and the American Civil Liberties Union has stated that they are not concerned about privacy issues in this case.

The rule is only a proposal and the public is invited to submit comments until February 3, 2003. Comments can be sent to insregs@usdoj.gov. Be sure to put INS No. 2182-01 in the subject heading to ensure the comment gets to the proper mailbox.

15. LEGISLATIVE UPDATE

No legislation has been introduced yet during this session of Congress.
