

SISKIND'S IMMIGRATION BULLETIN  
January 17, 2003

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

Dear Readers:

I promise you that John Ashcroft is not getting kickbacks from suddenly very busy immigration lawyers. But from the amount of new work immigration lawyers are suddenly getting as a result of the rapid expansion of the NSEERS Special Registration program, you might just wonder. This week the INS added five new countries to the list - Bangladesh, Egypt, Indonesia, Kuwait and Jordan. Citizens and nationals of those countries will have to present themselves soon at local INS offices or face a host of bad consequences.

You might also think that the INS has a secret source of funding since their drive to place an untold number (probably in the thousands) - of people into deportation proceedings as a result of Special Register will dramatically increase the workload of the Immigration Courts. If you are an immigrant and a criminal, you're probably a lot less likely to get deported in a hurry now that the INS is focused on this new group.

Special Registration is also having the same affect that 245i had on marriages. Many people who previously had not hurried into marrying their significant others are now hurrying up so that they can file their papers and get their adjustment applications filed before going in for Special Registration. The same is true for asylum applications and other types of petitions. Immigration lawyers often have to prompt their clients over and over again to get the documentation needed to file a case (clients sometimes say the same about their lawyers). Suddenly, it is dawning on everyone, lawyers and clients alike, that time is of the essence once Special Registration comes around.

Within the next several months, the rest of the world's countries will be included and this will become our normal operating mode. Immigration lawyers will be a lot busier and INS waits for immigration benefits will probably be a lot slower. Oh, and did I mention that the INS is going to go out of existence this year and be replaced by two new government agencies in the new Department of Homeland Security? Wait until you see what that massive reorganization is going to do.

If you love chaos, you're going to love 2003.

In firm news, I received an interesting honor this week. Nashville Post Magazine, that city's major business magazine, named me as one of the city's top 100 lawyers and the only immigration lawyer on the list. What surprised me even more when I heard about this is that I only commute into Nashville from Memphis, where I make my residence. The list is based on the magazine's extensive survey of local lawyers, so I consider making the list a nice feather in my cap. We'll get that article in our newsroom on the web site shortly. Firm lawyers have also been mentioned in several other news stories recently. You can find them on our site at [www.visalaw.com/news/](http://www.visalaw.com/news/).

As always, we remind readers that we're lawyers who make our living representing immigration clients. We would love to discuss becoming your law firm. Just go to

<http://www.visalaw.com/intake.html> to request an appointment or call us at 800-748-3819 or 901-682-6455.

Regards,

Greg Siskind

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## 2. THE ABC'S OF IMMIGRATION – F-1 STUDENT VISAS, PART I

In light of the implementation of the new Student and Exchange Visitor Information System (SEVIS), we are updating our article on F-1 student visas.

If you are interested in studying in the US, changes are you will need an F-1 student visa. US immigration law allows for the admission as nonimmigrants those who are coming to the US to participate in a full time course of study. Most students enter in F-1 status, although the J-1 visa (for exchange visitors participating in a program approved by the State Department) and M-1 visa (for vocational students) are also sometimes available. What follows is an overview of the process of obtaining an F-1 visa and maintaining that status. Employment related issues will be addressed in a future article.

### General Requirements

As with all nonimmigrant classifications, the most important requirement to obtain an F-1 visa is the demonstration of nonimmigrant intent. The student must maintain a home abroad that they have no intention of abandoning. The student must be coming to the US to pursue a full course of academic study, and must demonstrate that they possess the financial resources to allow them to study without the need to engage in unauthorized employment. Most students are able to get approved for a stay equal to the duration of their studies in the US and can study in any pre-approved institution. However, there are important exceptions.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 imposed a number of new restrictions on foreign students. Among these are the exclusion of foreign students from kindergarten through eighth grade at public schools and from publicly funded adult education programs. Also, foreign students in grades 9-12 at public schools must reimburse the school for the cost of the education. Failure to do this can result in a bar to admission. Foreign student in public high schools are limited to 12 months of study.

### Step 1: Find a School

A prospective student must first identify a school that is qualified to sponsor a student for a visa. A school that wishes to have foreign students enroll must first make an application with the INS. SEVIS imposed a number of changes in the process by which the INS ensures that a school is eligible to participate in the F-1 process. Schools must, of course demonstrate that they are legitimate educational institutions and appoint a designated school official (DSO) who will sign all necessary forms. Schools that are currently approved must apply to the INS no later than January 30, 2003 for access to SEVIS, or they will no longer be authorized to accept foreign students. Schools must also have completed a Form I-17 Petition for

Approval of School for Attendance by Nonimmigrant Student using SEVIS and submitted a certification fee of \$580 by November 15, 2002. Those schools that have been preliminarily accepted must complete a review process no later than May 14, 2004, and after that, the INS will review the approval of the school every two years.

#### Step 2: Get an I-20

For a foreign student to obtain F-1 status they must first receive a Form I-20 issued by the school that provides information about the school and the student. Before the school can issue an I-20 the following conditions must be met:

- The student must have made a written application to the school
- The school must have received the student's academic record and evidence of financial support
- The student must meet the school's qualifications for admission, including any English language proficiency
- The student must have been accepted by the school

The student will receive a paper copy of the I-20, but under SEVIS schools no longer maintain their own paper copies. Instead, schools will input the required information into SEVIS, making it available to the INS without having to contact the school directly.

#### Step 3: Apply for a Visa at a US Consulate

After the school issues the I-20, it sends it to the student abroad, who then applies for a visa at their local US consulate. To make the visa application the student must present the I-20, their passport, the necessary visa fee (which varies from location to location), Form OF-156 Application for a Nonimmigrant Visa, and evidence of financial support. Before the State Department will issue a visa, the school must have input the required information about the student into SEVIS, which the consulate is to access prior to issuing the visa. That the visa has been issued is also to be noted in SEVIS.

Unless there are unusual circumstances, the visa will generally be issued on the day the application is submitted, or only a few days afterward. A prospective student who has not yet decided on a school can request a B-2 prospective student visa, and once in the US they can seek F-1 status. The prospective student will not be allowed to begin classes until the INS approves the request for the change of status. Also, if a prospective student does make his or her intention to enroll in a course of study clear at the time of entry, the INS could very well deny the application for the change of status.

#### Step 4: Entering the US

After receiving the visa, the student may make an application for admission at a US port of entry. The student must present their passport, visa, evidence of support and the I-20. If admission is granted, the INS will keep one copy of the I-20 and return the second to the student. The student is issued an I-94 Arrival/Departure Record that contains a unique control number. This number is noted on the I-20, and becomes a sort of permanent identifier. For example, if an F-1 student leaves the US, upon reentry they are given a new I-94. However, the number on it is crossed out and replaced with the initial number noted on the I-20.

Eventually, the INS inspector will note in SEVIS that a student has entered the US. Until that happens, though, the INS copy of the I-20 will be forwarded to a data processing center and then, within 10 days, returned to the sponsoring school.

#### Step 5: Maintaining Status

In light of the bars on admission created in 1996, it is very important for the student to maintain their status while in the US. There are eight important things that must be done to maintain status.

- Keep a valid passport at all times, unless otherwise exempt from the passport requirement
- Attend the school authorized
- Participate in a full course of study
- Leave the US by the completion date shown on the I-20, or request a program extension from the school's designated student officer
- If the student wants to change from one educational level to another (for example a bachelor's program to a master's) they must apply to the designated student officer
- In most cases, work no more than 20 hours per week while school is in session
- Not work off campus without INS authorization
- Report any change in residence to the INS within 10 days.

Of course, one of the most important concepts in F-1 status is a "full course of study." INS regulations give five possible definitions for the concept.

- Postgraduate or postdoctoral study at a college, university, conservatory or religious seminary
- Undergraduate study at a college or university consisting of at least 12 credit hours per term, except in cases where to finish the program the student does not need to take 12 hours in the last term
- Study at a postsecondary institution that awards associate or comparable degrees, and whose credits are accepted by at least three other institutions of higher learning
- Study in a language, liberal arts, fine arts, or other nonvocational training program. This study must consist of 18 hours of attendance per week, 22 hours if laboratory work constitutes the dominant part of the course of study
- Study in a high school, providing the foreign student attends the minimum class hours per week required for graduation.

Under the SEVIS program, an F-1 student will be allowed to reduce their course load because of academic difficulties only once, and must resume a full course load at the start of the next full academic term. In the case of illness or another medical condition that prevents the student from pursuing a full course load, the student may receive permission to take a reduced course load for an aggregate total of 12 months, which will not include any reductions based on academic difficulties. Academic difficulties and illness are the only reasons a student will be authorized to take less than a full course load.

In next week's issue, we'll discuss employment authorization for F-1s and changing educational programs.

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### 3. ASK VISALAW.COM

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

Q - I am an H1-B visa holder. I am planning to go to the US this month. Within how much time should I get a job there? Can I do a non-IT job? there on my h1 visa?

A - You have to work for the employer that sponsored your H-1B visa doing the work described in the H-1B petition. The H-1B visa is not a blanket approval to work for any employer you like. If you don't work for the employer sponsoring your visa as soon as you enter the US, you risk becoming an illegal alien.

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Q - This is regarding special registration and whether it is applicable in my case. I was born in Yemen, however, I have always been a citizen of Country X. I found out that it is written in my birth certificate registered in 1973 (my year of birth): Certificate of entry of birth of a Citizen of Country X. Birth within the District of the Embassy of Country X at Aden. Citizen of Country X by birth and descent. My father was working for the Country X Embassy at Aden, Yemen as a government of India official. Do I need to go and register with the INS office? My green card application (I485) lists my country of birth as Yemen.

A - You need to be a "citizen" or "national" of Yemen to be subject to the requirement. I presume you are not a Yemeni citizen. As for being a "national" the rules define this as follows: "a person owing permanent allegiance to a state." I think you would win here as well. By the very nature of the job, a diplomat does not owe allegiance to the host country.

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Q - Is there any way for an employer to speed up the processing of an H1-B petition (e.g. paying additional fees)?

A - Yes. A \$1000 fee can be paid to secure a 15-day turnaround time from the INS.

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Q - What is the difference between non-immigrant and immigrant visa?

A - Non-immigrant visas are visas of a limited time duration. Immigrant visas are indefinite and a person with an immigrant visa can stay in the United States until becoming a citizen, abandonment of green card status or committing a deportable offense.

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Q - I am just wondering about the citizenship rights of a child who is born in air means in an aeroplane. What if it is US air space but none of the parents are US citizens.

A - A child born on a plane in the United States or flying over its territory would acquire United States citizenship at birth.

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Q - I have an asylee status in the US since July, 1998 and have applied for an adjustment of status to Permanent Resident under I-485 (Asylum) category since October 1998. I was fingerprinted in September 2002 and awaiting an interview call for my Green Card. Am I required to register myself under the Special Registration Campaign recently announced by the INS? Besides, when can I expect to receive my Green Card.?

A - You are exempt from special registration. As for getting your green card, I suspect it will be within the next few months.

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Q - Can I renew my F-1 student visa from the US?

A - No. While it is possible to do this for H-1B, L-1 and other types of visas, for F-1s, you need to apply at a consulate.

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Q - Unfortunately, the timing is a disaster. Your father's earlier petition was voided by the marriage of your sister. His becoming a citizen means that he can refile in the Family 3rd preference category. But unless she divorced, there is no way to reclaim the 1997 priority date.

A - In 1997 my father (got his green card in 1996) filed I-130 for my sister in India (who was 26 yrs old) at that time. The petition (2nd preference) is still pending since the current priority date on 2nd B preference is APR94. Sister got married in early 2001 and Father got his citizenship in late 2001. How would these events affect the current petition? Does it mean that the current petition is cancelled (invalid) automatically and a new petition has to be filed? Or, is there a way to change or adjust the status? If there is an adjustment of status available, will the petition get transferred to the Third (Married Sons and Daughters of Citizens) category?

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Q - I want to bring my wife in USA on H-4 visa. Her last name in passport is different than my last name. Is it a law that before applying for H-4 visa she has to get a new passport with the changed Last name?

A - You don't need to have the same last names for the H-4 visa.

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Q - I was caught by INS in last June and then I was released on bail and now my hearing date is on May third. My question is should I have to go to the INS for registration according to the new law.

A - You are not excused from registering based on my reading of the rules.

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Q - Traveling to the US on a visitor visa and marrying here is risky since the INS may take the position that she entered the US with fraudulent intentions.

A - A friend of mine is planning to marry a US citizen of Indian origin. However, she is not wanting to "wait" for her Fiancé Visa. Will it be possible for her to travel to the US on a B2 visa and marry the gentleman on her arrival in the US? Will she be allowed to change her "status" from B2 to V?

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#### 4. BORDER NEWS

The number of undocumented immigrants apprehended along the US-Mexico border has increased every day this year, a clear indication that migration patterns have returned to their pre-September 11th ways, with Mexicans who work in the US and visit family in Mexico for the holidays returning to the US. During the first two weeks of the year, 8,325 people were apprehended, compared to 7,703 last year. Last January, apprehensions were at a relatively low rate, presumably because fewer people returned to Mexico for the holidays.

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Police in Mexico have arrested a man they claim is responsible for locking 11 migrants in a grain car that ended up in an Iowa rail yard, leading to the deaths of all 11. Officials say that Lorenzo Cuellar de Lira is part of a smuggling ring.

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As had been widely rumored would happen, Mexican Foreign Minister Jorge Castaneda recently tendered his resignation. Castaneda was frustrated by the lack of progress on immigration issues, with discussions essentially ending after the September 11th terrorist attacks and Washington's increasing focus on Iraq. White House spokesperson Ari Fleischer said that President Bush regrets the impact the

attacks have had on immigration. Observers say that the appointment of Luis Ernesto Derbez, the former finance minister, to fill Casteneda's position is a clear sign that President Vicente Fox has accepted that Mexico is no longer a top priority for the US, and will pursue resolution of migration issues through small steps, rather than the "whole enchilada" Casteneda wanted.

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Rep. Bob Menendez (D-NJ), the new chairman of the House of Representatives Democratic Caucus, recently spoke with President Bush and urged him to support a program for the legalization of undocumented workers in the US. Menendez said such a program would not only improve the situation on the Mexican border, it would also help the economy, promote family reunification and, most importantly, improve national security by allowing a large, essentially underground population to join the mainstream. Last year the White House did support an extension of Section 245(i), but opposition within Congress blocked the provision.

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Two of the Haitians who arrived in the US last year in a dramatic landing in Miami have won their asylum cases, surprising advocates who have complained that the group has not been receiving adequate hearings or access to legal representation. One of those granted asylum claimed that he and his family were persecuted because of their opposition to the government of Jean-Bertrand Aristide. His family remains in Haiti, but since he has been granted asylum he can petition for them to join him in the US.

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Leaders of the National Border Patrol Council, the union that represents about 9,000 Border Patrol agents, say that thousands of agents are considering leaving their positions because when the Border Patrol is folded into the new Department of Homeland Security, unions will no longer be able to represent agents. Negotiations over the new department were held up last year because of disagreements over whether employees would be allowed to join unions. The White House won, and employees will not be unionized, but the government says that unions currently in place will be allowed to remain for one year. Nonetheless, many agents have been seeking jobs with other law enforcement agencies.

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Border Patrol agents in Puerto Rico apprehended 150 citizens of the Dominican Republic during a recent ten-hour period. Officials who have interviewed the migrants say that they are trying to reach the US before the new Homeland Security Department takes over the INS's functions, concerned that border security will be increased. Since October 1, 1,456 migrants have been apprehended attempting to enter Puerto Rico. During the entire 2002 fiscal year, only 838 migrants were apprehended.

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## 5. NEWS FROM THE COURTS

### Nwaokolo v. INS, Seventh Circuit

Philomena Nwaokolo, a citizen of Nigeria, was granted voluntary departure in 1985 after being placed in deportation proceedings for working in violation of the terms of her visa. She did not leave the US. In 1996, at which point she had three US citizen children, she retained an attorney to help her remain in the US lawfully. She twice filed motions to reopen her case, both of which were denied. She filed a third motion, this time claiming that she and her US citizen daughter would be subject to female genital mutilation in Nigeria, and that the United Nations Convention Against Torture therefore prohibited deportation. The motion was again denied, but the Board of Immigration Appeals granted a stay of deportation. Shortly before the stay was to expire, she filed a fourth motion to reopen, based on the same ground but including a second US citizen daughter who was three years old. This motion was denied and the stay lifted. Nwaokolo appealed to the Seventh Circuit.

In order to obtain a stay of deportation, it must be shown that there is some likelihood that the petition for review will be granted on the merits and that irreparable harm will result if the stay is denied that outweighs any harm to the INS. The Seventh Circuit found that Nwaokolo would likely win her petition for review. At no time did the Board of Immigration Appeals address the fact that her US citizen children would have to go with her to Nigeria, nor did it address the harm that might result to her daughters. The court found that this failure could easily be considered an abuse of discretion, particularly since they could be forced to undergo female genital mutilation, which the court characterized as torture. The court further found that even if the Board had considered the impact on the older daughter, it did not consider the impact on the younger daughter, now almost four years old. The court found she would be unable to resist the procedure, and because of her age, would have to live with the threat of it for many years before she would be able to return to the US, the country of her citizenship.

Given the tremendous harm that could result if the stay of deportation is not granted, and the negligible harm granting a stay would cause the INS, as well as the public interest in not sending US citizen children to a place where they could be tortured, the court granted the stay and imposed a schedule for a hearing on the merits.

The court ordered the parties to specifically address two issues in preparation for the merits hearing, whether the Board must take into consideration the hardship to US citizen children in ruling on a motion to reopen, and whether the INS has an obligation to notify child welfare authorities when the deportation of a parent could place a US citizen child in danger.

The opinion is available online at  
<http://caselaw.lp.findlaw.com/data2/circs/7th/022964p.pdf>.

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Salta v. INS, Ninth Circuit

Regina Salta entered the US in 1985 on a student visa, but never attended classes. She remained in the US, and had two US citizen children. In 1999, she approached the INS and asked the agency to issue an Order to Show Cause so that she could apply for cancellation of removal. The order was issued, and a hearing scheduled for November 4, 1999. At the hearing, she was told that her file had not yet arrived at the court and that the hearing would be continued. In 2000, Salta was notified that a new hearing would be scheduled. The INS sent another letter, by regular mail, scheduling a hearing for August 29, 2000. Salta failed to appear at this hearing, and was ordered deported. Salta received a letter telling her to report for deportation, and then filed a motion to reopen the removal proceedings, saying that she had never received notice of the August hearing. The immigration judge denied the motion, finding that she did not present evidence to support the claim, and the Board of Immigration Appeals dismissed her appeal. Salta then appealed to the Ninth Circuit.

INS regulations previously required such notices to be sent by certified mail, but have been changed to allow them to be sent by regular mail. When service could only be by certified mail, courts, including the Ninth Circuit, routinely found that such service created a strong presumption that delivery had been made. Since the change, the Ninth Circuit has not addressed what constitutes proper service. Here, the court found that because when something is sent by regular mail there is no evidence of it having been sent or of delivery having been attempted, it was improper for the immigration judge to dismiss Salta's motion to reopen. Salta had herself gone to the INS to be placed in proceedings, making it unlikely she would have received the hearing notice and not been present at the time scheduled. The court found that in this situation, a sworn affidavit saying no notice was received would be sufficient to rebut the presumption that the notice was delivered. While Salta did not submit an affidavit, the court found this failure reasonable given that the type of evidence that was required under existing precedent could not be produced in this case. Therefore, the case was remanded with instructions that Salta be granted a hearing to determine whether the motion to reopen should be granted.

The opinion is available online at <http://caselaw.lp.findlaw.com/data2/circs/9th/0171537p.pdf>.

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6. GOVERNMENT PROCESSING TIMES

California Service Center Processing Times

Jurisdiction: Arizona, California, Hawaii and Nevada.  
(Just In Time Report)

January 1, 2003

Petition Type	We are currently processing cases with these Receipt Notice
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	dates:
I-90	05/06/02
I-102	11/04/02
I-129 H1B	06/27/02
I-129 H2A	01/01/03
I-129 H2B	09/27/02
I-129 H3	10/27/02
I-129 E	07/24/02
I-129 L	11/27/02
I-129 Blanket L	11/21/02
I-129 O	06/24/02
I-129 P	06/27/02
I-129 Q/R	05/03/02
I-129 F	11/19/02
I-130 (IR)	07/09/02
I-130 (F1)	07/09/02
I-130 (F2A)	01/02/98
I-130 (F2B)	04/06/98
I-130 (F3)	10/16/98
I-130 (F4)	04/02/98
I-131	11/25/02
I-140 A (extraordinary ability)	09/11/02
I-140 B (outstanding professor or researcher)	11/08/02
I-140 C (multinational executive or manager)	10/01/02
I-140 D (professional holding advanced degree)	10/01/02
I-140 E (skilled worker or professional)	09/30/02
I-140 I (NIW)	12/06/02
I-140 G (other worker)	11/08/02
I-212 Waiver	01/18/01
I-612 Waiver	07/01/02
I-360	09/25/02
I-526	03/29/02
I-539	07/23/02
I-485	10/01/01

I-751	07/10/02
I-765 asylee	01/06/03
I-765 TPS Hurricane Mitch	01/06/03
I-765 TPS El Salvador	09/09/02
I-765 pending adjustment	09/09/02
I-765 all other	08/14/02
I-817	06/14/02
I-821 El Salvador	05/18/02
I-821 Hurricane Mitch	05/18/02
I-824	03/27/02
I-829	10/23/00
I-539 extension for F/M	11/18/02
I-539 extension for J	11/25/02
I-539 extension for H/L	11/25/02
I-539 extension other	11/25/02
I-539 change to F/M	11/18/02
I-539 change to J	11/21/02
I-539 change to H/L	11/21/02
I-539 change other	12/04/02

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

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#### Nebraska Service Center Processing Times

Jurisdiction: Alaska, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming.

January 1, 2003

Form	Processing cases with receipt notice dates on or before
I-90 to replace lost, damaged or destroyed I-551	3/27/02
I-90 to renew expiring I-551	4/01/02
I-102 for replacement/initial nonimmigrant arrival/departure form	1/24/02
I-129 / H1B	10/21/02
I-129 / H2A	12/18/02

I-129 / H2B	12/3/02
I-129 / H3	11/15/02
I-129 / L	11/25/02
I-129 / Blanket L	11/29/02
I-129 / O	10/24/02
I-129 / P	11/22/02
I-129 / Q or R	10/29/02
I-129 / TN	11/29/02
I-129F (fiancée)	7/23/02
I-130 / spouse, parent or child (under 21) of a United States citizen	5/20/02
I-130 / son or daughter (over 21) of a United States citizen	4/14/01
I-130 / brother or sister of a United States citizen	4/14/01
I-130 / spouse of a lawful permanent resident	4/12/01
I-130 / unmarried child under 21 of a lawful permanent resident	4/14/01
I-130 / unmarried son or daughter over 21 of lawful permanent resident	4/14/01
I-131 / Advance Parole	11/08/02
I-131 / Advance Parole for HRIFA principal applicant	4/17/02
I-131 / Reentry Permit	5/17/02
I-131 / Refugee Travel Document	11/18/02
I-140 A (extraordinary ability)	6/17/02
I-140 B (outstanding professor or researcher)	7/15/02
I-140 C (multinational executive or manager)	6/27/02
I-140 D (professional holding adv. degree/alien of exceptional ability)	10/21/02
I-140 E (skilled worker or professional)	10/2/02
I-140 I (National Interest Waiver)	7/05/02
I-140 G (other worker)	10/16/02

I-212 permission to reapply for admission after deportation/removal	9/4/02
I-360 petition for Amerasian, widow(er), or Special Immigrant	6/21/02
I-485 Asylum-based	2/1/99
I-485 Refugee-based	8/1/01
I-485 Employment -based	8/1/01
I-485 Haitian Refugee Immigration Fairness Act (HRIFA)-based	12/18/99
I-526 Immigrant Petition by Alien Entrepreneur	not processed at the NSC
I-539 / extension of stay for F or M non-immigrant	11/22/02
I-539 / change nonimmigrant classification to F or M	9/16/02
I-539 / change nonimmigrant classification to L or H	10/02/02
I-539 / change to other nonimmigrant classification	8/28/02
I-612 waiver of foreign residence requirement	9/16/02
I-730 Refugee/Asylee Relative Petition	7/1/02
I-751 Petition to Remove Conditions on Residence	5/24/02
I-765 / initial asylee or asylum applicant authorization	11/11/02
I-765 / employment authorization associated with Hurricane Mitch TPS	12/18/02
I-765 / employment authorization associated with El Salvador TPS	7/25/02
I-765 / employment authorization while I-485 is pending	11/08/02
I-765 / all other employment authorization	10/21/02
I-817 Application for Family Unity Benefits	8/20/02
I-821 / El Salvador	7/25/02
I-821 / Hurricane Mitch countries	12/18/02
I-824 Application for Action on an	1/21/02

Approved Application or Petition

These are not official INS times, nor are they endorsed by the Central Office.

Source: [American Immigration Lawyers Association](#)

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## 7. NEWS BYTES

According to a recent survey of immigrants in the US, despite increased tensions and difficulties, immigrants would still rather be in the US than their home country. The survey was conducted by Public Agenda, a nonpartisan organization in New York City, which contacted 1,002 immigrants from various nationalities and asked how their lives had been affected by the September 11th terrorist attacks. Only nine percent of respondents said that they faced increased discrimination. Despite the INS' bad reputation, 57 percent of those surveyed said the agency did a good, if slow job.

\*\*\*\*\*

An immigrant from the Czech Republic was sentenced this week to 27 months in prison for employing dozens of undocumented immigrants in his janitorial service. Officials say that Lubomir Chocholak was part of a massive immigration fraud ring that covered almost the entire east coast of the US. At least seven others have been convicted in connection with the ring, and the investigation is still ongoing.

\*\*\*\*\*

Nearly 300 immigrants who thought that they were permanent residents have learned that their green cards are fraudulent and that they were victims of a scheme involving immigration consultants and a corrupt INS supervisor. Many of those defrauded are professionals who came to the US legally, but now face deportation. The INS supervisor, Leland Dwayne Sustaie, avoided jail time by testifying against the consultants who provided him with bribes – totaling at least \$500,000 – in 1999. The four brokers who were convicted are all out of prison now, but for their victims, the story is just beginning as the government attempts to locate them all for deportation. The government claims that the immigrants knew that they were aware they were participating in fraud, even though one of the consultants convicted said they did not know.

\*\*\*\*\*

Reza Baluchi is an Iranian bicyclist traveled more than 46,000 miles across six continents on a tour for world peace until he ran into Border Patrol agents in Arizona two months ago. Since then, he has been in INS detention while officials try to figure out what to do with him. It is unclear when Baluchi's travels began, but it was certainly before the terrorist attacks in September 2001. He carries with him photographs of himself at various places around the world, including Africa, Europe and South America. He says he planned to finish his journey in Canada, but that the terrorist attacks prompted him to change his plans, seeking to arrive in New York City on the one-year anniversary of the attacks. He applied for a US visa at the consulate in Monterrey, Mexico, but because he is Iranian, processing took months. While waiting, he cycled around Sonora, and, on one occasion, got lost and ended up

crossing the border. Baluchi has applied for asylum in the US, claiming that he is not Muslim and that he has been persecuted for violating fasting laws during Ramadan.

\*\*\*\*\*

A former clerk at the Washington, DC, Department of Motor Vehicles has been charged with participating in a scheme to sell hundreds of fraudulent driver's licenses to undocumented immigrants. Gwendolynn Dean, who is free on bond, resigned her job last year after the scheme was revealed. None of the roughly 900 people who obtained the fraudulent licenses are believed to have any connection to terrorism, but officials are disturbed that the scheme was able to continue until June 2002.

\*\*\*\*\*

An analysis of deportation records by the Atlanta Journal Constitution shows that the number of people deported to Muslim countries increased significantly from October 2001 to September 2002, growing faster than deportations to any other countries. During 2002, the number of people deported to Algeria, Egypt, Jordan, Lebanon, Morocco, Pakistan, Saudi Arabia, Tunisia, and Yemen rose from 655 to 1,627. At the same time, the total number of deportations fell by 18 percent, with deportations to Mexico falling by 24 percent.

\*\*\*\*\*

A federal court judge recently made permanent her temporary order preventing deportations to Somalia. The judge imposed the order while a lawsuit challenging the legality of deportations to Somalia is pending. In the lawsuit, those facing deportation and their advocates argue that Somalia, which plunged into civil war in 1991, does not have an official government and therefore cannot agree to accept deportees. The INS argues that because Somali law does not require a person to have entry documents, there is no need to obtain formal government permission for the deportations.

\*\*\*\*\*

A former Sun Microsystems employee has filed a lawsuit against the computer company, claiming that the company fired her, along with more than 2,500 other employees, so that they could hire foreign workers on H-1B visas. According to the lawsuit, the company did so because it believed that foreign workers would work longer for less pay, and were easier to control.

\*\*\*\*\*

A New Jersey appellate court this week ruled that a lower court judge was in error when she allowed prosecutors to close bail hearings for a man believed to have sold fraudulent driver's licenses to two of the September 11<sup>th</sup> hijackers. After the hearing, from which even the defendant, Mohamed el-Atriss and his attorneys were excluded, the judge doubled bail to \$500,000. According to the appellate court, there was no evidence that the federal government believed the case involved matters of national security, and ordered the judge to hold an open bail hearing by the end of the month.

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## 8. INTERNATIONAL ROUNDUP

### New Mexican Foreign Relations Secretary Takes Office

Luis Ernesto Derbez left his post as Mexico's Secretary of the Economy and was sworn in Wednesday as Secretary of Foreign Relations. He promised to work toward reaching a migration accord with the United States and creating jobs so that workers won't have to find employment in the US and other nations. He also pledged to fight for human rights around the globe, specifically for Mexicans living abroad.

Former Foreign Relations Secretary Jorge Castaneda left office last week under pressure from lawmakers unhappy with handling of relations with Mexico's traditional ally, Cuba, although he had a good relationship with President Vicente Fox.

Derbez said he didn't plan to make any major changes in Mexico's foreign policy. Since Fox took office, Mexico has increased its international activism and has pushed the United States to allow more Mexican workers to cross the border legally.

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### Dutch Liberal Party Leader Suggests Payment for Integration Courses

Gerrit Zalm, leader of the Liberal Party (VVD) said new immigrants should be paid EUR 3,000 for graduating a compulsory integration course.

Students undergo a 600-hour program consisting of Dutch language and culture lessons. Zalm's proposed reimbursement would refund about half the cost of the classes.

He also suggested that immigrants should be allowed to take private courses, in order to reduce the backlog.

All Dutch immigrants must take integration courses, with the exception of newcomers from EU member countries, America, Indonesia and Japan.

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### EU to Fingerprint All Asylum Seekers

The EU launched a centralized fingerprinting system from Brussels Wednesday, posing a new hurdle to asylum seekers in Europe.

Border controls between most EU countries have been abolished, but all applicants over the age of 14 are now fingerprinted at their point of entry into the union. Anyone crossing a border and found to have applied for asylum in another member country will be returned there.

The fingerprint data will be stored for a maximum of 10 years and will be erased if an asylum seeker gains full citizenship.

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## 9. INS DESIGNATES FIVE MORE COUNTRIES FOR SPECIAL REGISTRATION

This week the INS added five more countries to the list required for special registration. The new countries placed in "Group 4" special registration are Bangladesh, Egypt, Indonesia, Jordan, and Kuwait. The addition of these countries brings the total of countries named for special registration to 25.

Only males born on or before February 24, 1987, who entered the US in nonimmigrant status on or before September 30, 2002, are required to register. Lawful permanent residents are not required to register, nor are people who have been granted asylum. People who have asylum applications pending on or before January 16, 2003 are not required to register, but those with an asylum claim filed after that day will be. Nonimmigrants in the US as diplomats or employees of a foreign government or international nongovernmental organization are not required to register.

Those subject to special registration under this rule must report to a designated INS office between February 24, 2003, and March 28, 2003. They must present their passport, visa and other immigration documents, as well as evidence that they are working or studying in accordance with their nonimmigrant visa. They must also present proof that they are residing in the US. They will be fingerprinted and photographed, and must provide any additional information the INS requests.

Individuals subject to special registration will have a number of important requirements. Each year the person remains in the US, the individual will be required to reregister within 10 days of the anniversary date of the initial registration. Also, if an individual changes one's address, employment, or educational institution, the person must inform the Service within 10 days of this change on a Form AR-11 SR. Lastly, upon leaving the United States, the individual must appear before a Service officer at a designated port-of-departure and depart from that port on the same day.

On January 16, 2003, the Attorney General authorized a reopening of the special registration period for certain nonimmigrants. The extension allows individuals who failed to register by their previous deadline to fulfill their special registration requirement without penalty. These individuals will be allowed to comply with special registration between January 27, 2003, and February 7, 2003.

The reopening only applies to individuals from countries named for Group 1 or Group 2 special registration. Specifically, special registration has been reopened for:

Group 1: Iran, Iraq, Libya, Sudan, and Syria

Group 2: Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morocco, North Korea, Oman, Qatar, Somalia, Tunisia, United Arab Emirates, and Yemen.

One of the apparent reasons for the reopening of the special registration period is a critical error that was located on the INS's website. A notice written in Arabic and posted on the website indicated that individuals must register if they "entered the US legally on or AFTER" September 30, 2002. The notice should have properly read, "on or BEFORE September 30, 2002."

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#### 10. MIGRANT CRASH RAISES QUESTIONS ABOUT ACTIONS OF BORDER PATROL AND MEXICAN CONSULATE

Two women were killed last week and 15 other people injured when the truck they were traveling in crashed after being chased by Border Patrol agents near the border in Southern California. There are significant restrictions on when Border Patrol agents can give chase, and in this incident, officials say the decision was made after the truck driver tried to run down two agents.

Agents first tried to stop the truck by blowing out its tires with a spike strip, but the truck twice avoided them, aiming instead at the agents placing the strips. A third attempt worked, but the truck continued on a flat tire at speeds of at least 80 miles an hour. After 22 miles, the driver lost control of the truck, and it crashed into a bridge guardrail. The driver of the truck, Carlos Moreno, has been charged with two counts of murder, among other charges.

Both the California Highway Patrol and the Border Patrol have been investigating the incident. Many others, including the Mexican consul general in San Diego, are questioning whether it was appropriate to attempt to stop the truck with spike strips when agents knew it was packed with people, especially when there was a Border Patrol helicopter following the truck.

As the investigation proceeds, there have been questions about whether Mexican consular employees went to the hospital where many of the injured were treated and, claiming to be INS officials and attempted to gain the release of a person alleged to be an accomplice of the smuggler. There are also allegations that they appeared at the scene of the crash and tried to help the smuggler escape. The consulate says they did nothing of the sort, and that their officials on the scene were only wearing identification badges issued by the INS, adding that they informed the Border Patrol that they went to both the scene and the hospital in order to offer services to Mexican citizens. Border Patrol officials have not confirmed or denied that the people at the scene were with the Mexican consulate.

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#### 11. STATE DEPARTMENT VISA BULLETIN – FEBRUARY 2003

Priority Dates for Family Based Immigrant Visas

All Areas Except Those	Chargeability	MEXICO	PHILIPPINES
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Listed			
Family			
1 <sup>st</sup>	22MAY99	01APR93	01APR90
2A*	15NOV97	08JUN95	15NOV97
2B	22MAY94	01NOV91	22MAY94
3 <sup>rd</sup>	08FEB97	15FEB93	08DEC89
4 <sup>th</sup>	08FEB91	08FEB91	15DEC81

Priority Dates for Employment-Based Immigrant Visas				
	All Chargeability Areas Except Those Listed	INDIA	MEXICO	PHILIPPINES
Employment-Based				
1 <sup>st</sup>	C	C	C	C
2 <sup>nd</sup>	C	C	C	C
3 <sup>rd</sup>	C	C	C	C
Other Workers	C	C	C	C
4 <sup>th</sup>	C	C	C	C
Certain Religious Workers	C	C	C	C
5 <sup>th</sup>	C	C	C	C

Targeted Employment Areas/Regional Centers	C	C	C	C
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DV NUMBERS FOR FEBRUARY

Region	All DV Chargeability Areas Except Those Listed Separately	
Africa	12,250	
Asia	6,000	Except Bangladesh 5,600
Europe	19,125	
North America (Bahamas)	12	
Oceania	290	
SOUTH AMERICA, CENTRAL AMERICA, and the CARIBBEAN	775	

ADVANCE NOTIFICATION OF RANK CUT-OFFS THAT WILL APPLY IN MARCH

Region	All DV Chargeability Areas Except Those Listed Separately	
Africa	14,150	
Asia	8,400	Bangladesh 6,600
Europe	22,500	

North America (Bahamas)	13
Oceania	345
SOUTH AMERICA, CENTRAL AMERICA, and the CARIBBEAN	975

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## 12. SUPREME COURT HEARS ARGUMENTS IN CASE INVOLVING DETENTION OF PERMANENT RESIDENTS PRIOR TO DEPORTATION

This week, the Supreme Court heard oral arguments in a case involving the indefinite detention of permanent residents. In 1996, Congress passed new laws dealing with detention and deportation of noncitizens who have committed crimes in the US. In 2001, the Supreme Court ruled that people ordered deported, but who cannot be deported because their countries of nationality refused to accept them cannot be indefinitely detained, and must be provided the opportunity to demonstrate that they deserve to be released.

The current case, involving Hyung Joon Kim, a permanent resident from South Korea, addresses whether the INS can detain permanent residents who have not yet been ordered deported without providing them a bond hearing to determine whether they are a flight risk or a threat to the community. A lower court judge found Kim's detention unconstitutional and ordered the INS to grant a bond hearing, but the INS simply released him on \$50,000 bond without a hearing, a fact that Kim's attorneys say shows that the government does not consider him either a danger or a flight risk.

At the hearing, government lawyers argued that the case is about public safety and security, and that those being detained have been convicted of crimes that mean they no longer have the right to live in the US. At least two members of the court seemed to agree with the government's position. Justice Antonin Scalia called the detention law not "terribly unreasonable," and Chief Justice William Rhenquist said the law was valid in light of evidence that showed more than 20 percent of those released had failed to appear for deportation proceedings.

Lawyers for Kim argued that while some people the government seeks to deport might be dangerous and fail to appear for hearings, this is not the case for all of them, and that there should therefore be individual hearings to determine whether a person should be released. They also added that not everyone the government places in deportation proceedings ends up being ordered deported.

A decision is expected sometime this summer.

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## 13. STATE DEPARTMENT REQUESTS POSTS RE-SUBMIT SECURITY CLEARANCE REQUESTS

Over the past few months, we have heard from numerous individuals around the world stuck outside the US waiting for security clearances in order to enter the US. Most of the time, the checks take just a few weeks. But we are receiving persistent reports of delays of months and consulates appear to have little information to offer applicants to explain the delays. That is because the State Department submits requests for security clearances to the FBI in the United States and consular offices can do little to speed the process.

While the State Department has not admitted that there may be a problem, the American Immigration Lawyers Association is reporting that the State Department's Visa Office is instructing posts to re-submit security clearance requests for cases submitted on or before August 15, 2002 that have not yet been cleared. AILA is advising immigration lawyer members of the association to contact consular posts and request security clearance re-submissions if they have not already occurred.

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#### 14. IMMIGRATION ADVOCACY GROUPS ADDRESS CONCERNS WITH NEW HOMELAND SECURITY CHIEF

Several of the nation's leading immigration advocacy organizations have signed off on a letter to Tom Ridge, Secretary-Designate of the new Department of Homeland Security. DHS will be taking over the functions of the Immigration and Naturalization Service this year. The groups signing on to the letter included the following:

- American Immigration Lawyers Association
- Catholic Legal Immigration Network
- Hebrew Immigrant Aid Society
- National Asian Pacific American Legal Consortium
- National Association of Latino Elected Officials
- National Council of La Raza
- National Immigration Forum
- United Jewish Communities/Washington Action Office

The letter chiefly addresses the integration of the INS into DHS. A number of different recommendations are offered by the groups.

- Coordination

The groups are urging Ridge to ensure that the work of the new Directorate of Border and Transportation Security and the Bureau of Citizenship and Immigration Services are adequately coordinated. The groups state that this issue is not adequately addressed in the law creating DHS.

- Adequate Attention to Both Enforcement and Services

The groups are urging that the two new bureaus receive equal attention, support and funding. User fees should be supplemented with direct Congressional appropriations.

- Expertise and Accountability

The transition should be undertaken so as to ensure that services are not interrupted or delayed. Officials in charge must remain accountable for problems resulting from the reorganization

- Ports of Entry

Bureau of Citizenship and Immigration Services personnel should be present at each port of entry and be given key responsibilities there

- Local Immigration Offices

The groups want to ensure that local immigration offices are adequately staffed and funded in order to remain accessible to the communities they serve.

- Visa Policy

The Directorate of Border and Transportation Security, which has the authority to establish and administer rules governing the granting of visas, should balance national security and economic security needs when setting policy rather than making physical security the only factor in setting policy.

- Refugees

Two dedicated corps for asylum and refugee claims should be preserved within the Citizenship and Immigration Services structure.

- Civil Rights Protections

The civil rights and privacy officers called for in the DHS bill should be empowered to effectively protect civil rights and liberties.

- Ombudsman

Secretary Ridge is urged to ensure that the ombudsmen called for in the legislation to identify problems and recommend changes be adequately funded.

- Private Sector Liaison and Advisory Councils

The new law calls for an official to be appointed to serve as a liaison to the private sector to do outreach and evaluate the impact of the department's policies, regulations and actions. The advocacy groups are urging DHS to adequately fund this vital function.

The new DHS is still formulating the transition plan and we will report on this major story as we learn more.

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## 15. LEGISLATIVE UPDATE

The incoming Chairman of the Senate Appropriations Committee, Ted Stevens (R-AK) has created draft budget proposals for all federal agencies, and under his proposals, funding for many parts of the INS would be cut. Among those areas that would be cut are funds for port security. Also, implementation of high-tech border security systems would be delayed, and funding for new facilities along the borders would be cut. Republicans say the reason for the budget cuts is that the INS has a history of poor budget management, while Democrats charge that Republicans are not doing enough to improve border security.

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Committee assignments for the House of Representatives have been made. There are eight Republicans on the House Immigration Subcommittee, which continues to be chaired by Rep. George Gekas (R-PA). The other Republicans on the Subcommittee are Rep. Darrell Issa (R-CA), Rep. Melissa Hart (R-PA), Rep. Elton Gallegly (R-CA), Rep. Chris Cannon (R-UT), Rep. Jeff Flake (R-AZ), Rep. Randy Forbes (R-VA), and Rep. Lamar Smith (R-TX), the architect of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act. The Democrats on the Subcommittee are Rep. Sheila Jackson-Lee (D-TX), Rep. Barney Frank (D-MA), Rep. Howard Berman (D-CA), Rep. Zoe Lofgren (D-CA), and Rep. Marty Meehan (D-CA).

Committee assignments have not yet been made in the Senate because of disagreements over how to allocate funding and committee assignments in the closely divided Senate, where there are 51 Republicans and 49 Democrats.

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[H.R. 47](#), the Restoration of Fairness in Immigration Act of 2003, introduced by Rep. John Conyers (D-MI) would make significant changes to immigration law, primarily by repealing many of the measures adopted in 1996. Similar bills have been introduced in prior sessions of Congress without passing, and given the current climate, there is likely little chance of this bill passing. Some highlights of the bill follow.

The bill would limit the use of expedited removal to designated migration emergencies, and would require the hearings to be conducted by immigration judges rather than INS officers. It would expand judicial review of removal orders, asylum determinations and detention, and would limit indefinite detention by requiring the INS to release those who cannot be deported and are not a danger to the community. A Board of Visa Appeals would be established to review decisions by consular officers.

The definition of aggravated felony would be amended by requiring a five-year prison term for many offenses, rather than the one year currently in place, and the expanded definition of aggravated felony created in 1996 would no longer be applicable to offenses committed before then. Expunged and convictions otherwise vacated would no longer be considered convictions for immigration purposes. People

convicted of aggravated felonies would be eligible for cancellation of removal so long as their sentence was less than five years.

Section 245(i) would be made permanent, while the class of people eligible for V visas would be expanded by eliminating the requirement that the underlying family petition be filed before the enactment of the Legal Immigration Family Equity Act, and by eliminating the requirement that the petition be at least three years old. The bill would eliminate the requirement that a person apply for asylum within one year of arriving in the US, would make gender-based persecution a ground for asylum, and would strengthen the presumption that asylum should be granted in cases where there was past persecution.

[H.R. 82](#), the Increase in Numerical Limitation for Asylees Adjustment Act of 2003, introduced by Rep. Sheila Jackson-Lee, would increase the number of asylees who may be granted permanent residence each year from 10,000 to 25,000.

[H.R. 83](#), the Date of Registry and Legal Amnesty Restoration Act of 2003, also introduced by Rep. Jackson-Lee, would change the registry date from January 1, 1972 to January 1, 1986 and would, in each subsequent year until 2008 advance the registry date by one year.

[H.R. 84](#), the Preserving Educational Opportunities for Immigrant Children Act of 2003, also introduced by Rep. Jackson-Lee, would eliminate the prohibition on states allowing undocumented immigrant children from receiving in state tuition rates to attend college, would make children who have been granted or applied for cancellation of removal eligible to receive public benefits, and would allow undocumented children under 18 who have lived in the US continuously for three years to apply for permanent residence. Children over 18 would be allowed to apply if they have resided in the US continuously for five years, three of which must have been before turning 18.

[H.R. 85](#), also introduced by Rep. Jackson-Lee, would extend the deadline for Section 245(i) eligibility to applications filed prior to April 30, 2002.

[H.R. 87](#), the Rural and Urban Health Care Act of 2003, also introduced by Rep. Jackson-Lee, would modify some of the requirements for H-1C visas for registered nurses, would allow any facility to sponsor an H-1C petition, and would increase the annual number of visas available to 195,000. It would also increase the number of J-1 visa waivers state's can sponsor from 30 to 40.

[H.R. 88](#), the Father's Equity Act, also introduced by Rep. Jackson-Lee, would modify the requirements for a US citizen father to pass citizenship to a child born abroad out of wedlock by allowing him to legitimate the child at any time. The child would also be able to apply for a certificate of citizenship after the death of the father.

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