

SISKIND'S IMMIGRATION BULLETIN
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Published by Greg Siskind, partner at the Immigration Law Offices of Siskind, Susser,
Haas & Devine, Attorneys at Law; telephone: 800-748-3819, 901-737-3194 or 615-
345-0225; facsimile: 800-684-1267, email: gsiskind@visalaw.com, WWW home
page: <http://www.visalaw.com>.

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consultation with the firm, go to <http://www.visalaw.com/intake.html>. Editors: Amy
Ballentine and Greg Siskind. Contributors: Karen Weinstock, David Delgado and Mick
Wright.

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1. OPENERS

Dear Readers:

Good news from the INS? Lately I've been talking a lot of doom and gloom, but a curious news development has occurred in the last 24 hours. The INS is planning a rollback on its fees to levels not seen in quite some time. Yes, the INS is lowering its fees across the board. Why? Congress specifically called on the INS in the Homeland Security Act of 2002 to drop the surcharge in its applications to support refugee and asylum petitions as well as cases where application fees are waived. Some of the fees will drop substantially and we include the revisions in this week's issue. The fee drop goes into effect today. The INS says not to worry if you happen to send in the higher amount and that it will send refunds later. I'm not ready to jump for joy just yet. First, aside from the issue of what this will mean for the funding of cases for refugees and asylees, there is some indication that Congress might modify the law and drop the provision calling for the fee rollback. If that happens, the INS has suggested that it may send out requests for people to send in more money. I can't help but think that this could cause substantial processing delays if this were to happen.

Another interesting piece of news came up in the last few hours. The American Immigration Lawyers Association is reporting that the INS' General Counsel, Bo Cooper, has stated that people who have entered the US in advance parole status based on an adjustment of status application are not subject to the Special Registration requirements. This contradicts the stated policies of some local INS offices. Of course, the INS has not always followed the rulings and statements of their own lawyer, so this does not mean the issue has been put to rest. Hopefully, INS headquarters will issue a memo on this subject.

As usual, we include all of the week's news as well as our regular features this week. We welcome your suggestions and comments; please send them to us at gsiskind@visalaw.com.

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

Regards,

Greg Siskind

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

Last week we began our discussion of F-1 student visas with the procedures for applying for one. This week we will continue with the discussion, focusing on

program changes and employment issues, including changes mandated by the new Student and Exchange Visitor Information System.

Changing Academic or Degree Programs

Transferring Schools

Students may transfer to a new school up to 60 days after completing a course of study at another institution. Because SEVIS allows a student's records to be available to only one school at a time, the student will be issued the new I-20 only when the date specified for their transfer occurs. After this date, the initial school will no longer have access to the student's SEVIS records, so the student must be sure of their desire for a transfer.

Changing Educational Programs

If a foreign student changes educational programs within the same institution, a similar process is required. The student should obtain a new I-20 and within 15 days of beginning the new program, submit it to the school's designated student officer. The officer should note on it that the student is changing from one program to another at the same institution, and submit it to the INS within 30 days of receiving it from the student. If the student had employment authorization, he will not lose it because of a change in program.

A change in educational program is not a change in major. Rather, it indicates that the student is pursuing an entirely new degree. If the student changes major, they will need a new I-20 before leaving the US, as the old one will no longer be accurate for reentry purposes. However, the INS does not need to be notified of this change.

Out of Status Students

If the student is out of status, either through failure to enroll for a full course of study during a term, unauthorized employment, or for any other reason, they must seek reinstatement with the INS before being allowed to continue their studies. This request must be made within five months of falling out of status. Also, unless the status violation relates to taking less than a full course load when the Designated School Official could have authorized it, the student must show that the need for reinstatement was the result of circumstances beyond their control. A request for reinstatement must include the following:

- Form I-539 Request to Change or Extend Nonimmigrant Status
- Form I-20 (school's copy)
- The student's I-94
- A supporting statement
- Filing fee of 0 for the I-539

The support statement is the crucial element of this application. It must outline that the student's failure to maintain status was because of circumstances beyond his or her control, and that failure to reinstate the student would result in extreme hardship to the student. The letter must also specify that the student is now, or will, pursue a full course of study, has not been employed without authorization, and is not in

removal proceedings. The reinstatement application is filed with the INS district office having jurisdiction over the school.

Employment Related Issues

As a general rule, foreign students are not authorized to work while in the US. There are, however, some exceptions to this rule.

On Campus Employment

Two types of on campus employment are allowed without explicit INS authorization. These are

- On campus employment that will not displace a US resident
- On campus employment as part of a scholarship, fellowship, post-doctoral appointment, etc.

For the first type, the issue will be whether a US worker will be displaced. Whether this is the case is left by and large to the school. The standard used is whether the job is one typically filled by students, such as library assistants. If this is the case, a US worker will not be displaced. The employer in this situation need not always be the school. For example, the foreign student can work for a commercial firm that contracts with the school to provide services, such as a bookstore or cafeteria. While school is in session the student cannot work more than 20 hours per week, although during vacations the student may work full time.

The second type of preauthorized employment, when it is part of a scholarship, etc., is considered part of the academic program. While the work must be "on campus," INS regulations allow work at some off campus locations. There are two primary situations when this is the case. First, if the workplace is "educationally related" to the school, it is considered on campus. Second, a workplace that is "educationally affiliated" with the school is considered on campus. This covers situations in which the student is conducting research with a professor who has a research grant that does not come from the school. Again, the student cannot work more than 20 hours a week while school is in session, but can work full time during vacations.

Work-Study Employment

The second type of student employment that does not require specific INS authorization is employment in conjunction with a work-study program (also called "curricular practical training"). Such programs require students to work as part of their academic training. Other types of employment covered by this rule include work for which the student receives academic credit, and work that is required for graduation, such as an internship, whether or not academic credit is earned. A student cannot engage in curricular practical training during the first nine months in school, although an exception is made for graduate students. If a student receives more than one year of curricular practical training, they are not eligible for optional practical training. That a student is obtaining curricular practical training must be noted in SEVIS.

Off Campus Employment because of Economic Necessity

For a student to obtain permission to work off campus because of an unforeseen economic necessity, INS permission must be obtained. Also, the student must meet the following requirements:

- There is “a severe economic hardship caused by unforeseen circumstances beyond the student’s control.” Examples include loss of financial aid or on campus employment without fault on the part of the student, a severe devaluation in the currency of their home country, substantial increases in the cost of tuition or costs of living, medical bills, and an unexpected change in the condition of the student’s source of support.
- There must be no suitable and available on campus employment opportunity
- The student must have completed a full academic year of study (nine months)
- The student must be in good academic standing
- The designated student officer must recommend work authorization
- The student must obtain employment authorization from the INS
- The student can work no more than 20 hours while school is in session

Optional Practical Training

Optional practical training is designed to give the foreign student an opportunity to further their education by applying what they have learned in a job. The job must be related to their field of study, and the student is authorized to work no more than 12 months. Optional practical training, often referred to as OPT, may be obtained during school or after graduation, but is still limited to 12 months. Therefore, any OPT time used before graduation will mean it is unavailable after graduation. It must be completed within 14 months of the student’s completion of the academic program.

Pre-graduation OPT is available in the following circumstances:

- When school is not in session, as long as the student is eligible for the next academic semester and intends to register
- When school is in session, so long as the student works less than 20 hours a week

Post-graduation OPT is available in the following circumstances

- When the student has completed the course of study
- When the student has completed all classroom requirements for a degree, but has not completed a thesis (or its equivalent) necessary for the degree

Applying for Optional Practical Training

The student must apply to the designated student officer, who will evaluate the request and make a recommendation on it. This recommendation is to be based on two factors, whether the training sought is related to the student’s field of study and whether it is appropriate for their educational level. Once this decision is made, DSO notes the recommendation in SEVIS, and sends the I-12 to the INS along an application for work authorization.

This application is sent to the INS Service Center. The Service Center will either send the employment authorization card directly to the student or to the local INS office with jurisdiction over the school. If the INS does not adjudicate the request within 90 days, the student may go to the local INS office, and, upon presenting the receipt notice from the Service Center, receive an interim employment authorization document that will be valid for 240 days.

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 need information on a case where a husband is a naturalized US citizen and the wife is in Mexico. She qualifies for an H-1B. Getting her through the K-3 visa will take 6-12 months. Can we file for an H-1B visa for her or will the INS/consulate not grant it because she is married to a USC?

A - Marriage to a US citizen is definite NOT a problem in an H-1B case.

Q - I have a friend who decides to use his company to sponsor me for H-B1 even though I'm not going to work for his company, I want to know if its o.k. to use the H-b1 to work in another company who is unwilling to sponsor.

A - This is a dreadful idea and you really should reconsider. You would be committing fraud and risk being deported and can forget immigrating to the US. The company that knowingly hired you would also be exposing themselves to serious problems. You should only work for companies that sponsor you for the visa and should not come into the US unless the job is genuine.

Q - My employer just laid me off. They are asking me to sign a document waiving the right to sue them in exchange for severance pay as well as waiving the right to ask for a return ticket home under the H-1B rules. Is this legal?

A - Your employer is obligated to pay for your return ticket home if you decide to leave the US. The employer is not obligated under immigration law to offer you a severance pay package. As for your right to sue the employer for damages, this is really not an immigration law question and will instead be governed by the labor laws in the state where you are living. You should consult a lawyer specializing in such matters in your local area. So your signing or not signing the agreement should not affect your immigration status. You should, however, quickly make plans to ensure you remain in legal status. If you are still employed, you should definitely consider filing a change of status application to a B-1/B-2 visitor classification so that you remain in legal status while you search for a new position.

Q - My spouse wants to start working and I thought he would get EAD sooner by adjusting status here in US than opting for Consular processing. Is my understanding wrong..

A - That would be a good reason to adjust status. If you file for adjustment of status, you can simultaneously file in most cases for an employment authorization document and be working legally on that work card within just a couple of months. Consular processing can take six months or more and there is no right to work in the interim as a benefit of having filed such an application. There is also the possibility of applying for both, though you should be careful and discuss this option with an attorney. The INS takes the position that you cannot do both. However, there is arguably nothing in the law which supports this position. In an employment-based case, when you file an adjustment of status application and then request the INS notify a consulate for purposes of consular processing the green card, the INS will consider you to have abandoned your application and will normally terminate the adjustment application. However, if you initially request consular processing and then file for adjustment later, the INS has typically not terminated the adjustment application. Again, speak to your attorney about this. For you attorney readers out there, I would be interested in knowing your experience with following such a strategy. Just email me at gsiskind@visalaw.com.

Q - I've heard that 5 year waivers will soon be available (entry waivers for people that have a drug conviction) instead of the current 1 year waiver. Have you heard when they will be available and at what cost?

A - This, to my knowledge, is just a rumor and I would be very surprised if there were any truth to it. We hear rumors like this all the time and they are almost always related in no way to reality.

Q- Because of the war in Vietnam, my dad lost all of his documents -which included the marriage and divorce certificates with my mom. Can my aunts (my dad's sisters who are now in U.S.) be able to provide the affidavits to explain the situation? In the back of the I-130, there is a section of using affidavit if do not have a real document. I'm very anxious on your response since I prepare to apply for my dad to come to the US and I need to file the I-130 form with the INS.

A - Generally speaking, if you can prove that a document is not available (a letter from an official in your home country usually works), then you can use an affidavit instead.

Q - I and my wife are greencard holders for 5 years and fulfill all requirements for applying for naturalizations. We have a daughter who is 12, do we need to file a separate N-400 form for her or any other form?

A - You do not need to file a separate application for your daughter. After you naturalize, you can file an N-600 application for certificate of citizenship to be able to document that she has naturalized through you.

Q - I am citizen of Ukraine. I have been in the USA for 5 years. I am currently working as an accountant on Employment authorization card. I am on student visa here. How long would I have to wait to get my Green card and Citizenship if I would marry US citizen?

A - Depends on the local INS office. Times can vary dramatically from place to place. You can compare INS offices for adjustment of status processing if you go to my web page at www.visalaw.com/localtimes.html.

4. BORDER NEWS

According to the Border Patrol, there has been an increase in the number of armed undocumented entrants across the Arizona border. During the first four months of fiscal year 2003, there have been 12 reported encounters, compared with only four during the entire two previous years. Many advocacy groups claim that the reason for the increase is the growing number of private armed groups patrolling near the border, leading migrants to fear danger from what some call vigilante groups. Members of these groups say the reason they are armed is because of violence done by migrants.

The Border Patrol is reporting that the number of deaths along the US-Mexico border is down substantially from the same period last year. In a number of sectors on the Mexican border that saw multiple deaths last year there have been only a handful this year.

Officials in Pasadena, California, recently freed 16 undocumented immigrants they suspect were being held by smugglers pending payment of smuggling fees. The fortified house was discovered after family members of some of those being held made a payment and were told they owed more money. After that, they contacted a police officer.

Prosecutors in New York have charged two men with operating an immigrant smuggling ring that brought in at least 40 people to the US over the past six years. The charges stem from the investigation launched just before New Year's Eve into a claim, later found to be false, that five possible terrorists had just entered the US. While there is no evidence that anyone involved in the ring, or anyone brought to the US, has connections to terrorism, officials say that it is important to thoroughly investigate rings such as this so that they can gain a better understanding of how they operate.

Last week a group of about 20 Haitians was detained after arriving on Key Biscayne near Miami. Because of the policy instituted last year after the arrival of more than 200 Haitians, they will all be detained while in the US.

A year after Florida Gov. Jeb Bush announced that state law enforcement agents would check the immigration status of people pulled over for traffic violations, the policy is going largely unenforced. The state began issuing driver's licenses set to expire when a person's legal stay in the US expired, making it possible for a police officer to tell if a person was in the US without authorization. According to a number of police departments, they are either unaware of the policy or are unsure of how to enforce it. Despite these problems, the governor's office says that the program is part of an overall plan to prevent terrorist attacks.

The Haitian Lawyers Association has filed a lawsuit against the federal government, seeking the release of six of the Haitians detained by the INS after more than 200 arrived in Miami last October. According to the suit, the continued detention of the asylum seekers denies them their due process rights.

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Tom Ridge, the newly appointed Secretary of Homeland Defense, met this week with his Mexican counterpart, Interior Minister Santiago Creel, pledging to better protect their common border from terrorism while improving the flow of trade. During the meeting, the two discussed the implementation of the "smart border" agreement signed by US President George W. Bush and Mexican President Vicente Fox. After the meeting, Creel expressed hope that Ridge would help to restart talks on the legalization of undocumented Mexicans in the US.

A former member of the Haitian military is one step closer to being deported from the US after a federal appeals court denied his appeal. Carl Dorelien was convicted of human rights violations in Haiti based on his participation in a 1994 massacre of 25 people. He was ordered deported in 2001 after an immigration judge found that it was not likely that he would be subjected to torture if returned to Haiti.

Kerciku v. INS, Seventh Circuit

Adrian Kerciku, a citizen of Albania, applied for asylum in the US, claiming that he had been persecuted by the government because of his pro-democracy activities. At the hearing, the immigration judge questioned him about the documents he submitted in support of his application and abruptly ended the hearing, finding neither Kerciku nor his documents credible. Kerciku appealed, arguing that he was denied due process.

Kerciku claimed to come from a well-known Albanian family that had been persecuted by the government since the end of World War Two. He said that he was forbidden from seeking higher education and was on a number of occasions arrested for participating in anti-government demonstrations. After the communists lost control of the Albanian government, Kerciku became an employee of the Democratic Party chairperson. He claimed to have received a number of death threats, which continued even after he moved to the Netherlands to work at the Albanian embassy there. After the communists regained control of the government in 1997, he left for the US. At his asylum hearing, he presented a number of documents in support of his claim. The immigration judge then terminated the hearing, saying that the neither the documents nor the claim was credible, before Kerciku was allowed to testify on his own behalf.

The court found that this did not satisfy due process, and that Kerciku was prejudiced by not being allowed to present testimony.

The opinion is available online at
<http://caselaw.lp.findlaw.com/data2/circs/7th/021948.pdf>.

In re Koloamatangi, Board of Immigration Appeals

Siaosi Koloamatangi, a citizen of Tonga, was placed in deportation proceedings and applied for cancellation of removal. He had become a lawful permanent resident in 1985, based on a marriage to a US citizen. This marriage, however, was not valid because Koloamatangi was already married at the time. While in deportation proceedings, he argued that as a permanent resident, he was eligible for cancellation of removal. An immigration judge, however, found that because he obtained permanent residence through fraud, he was never legally a permanent resident. He appealed to the Board, which affirmed the ruling of the judge.

The Board rejected Koloamatangi's argument that regardless of how one obtains permanent residence, one is a permanent resident until the INS issues a final deportation order.

The opinion is available online at
<http://www.usdoj.gov/eoir/efoia/bia/Decisions/Revdec/pdfDEC/3486.pdf>.

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.

01.15.2003

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	8/30/2002
I-129 / H2A	current
I-129 / H2B	12/11/2002
I-129 / H3	01/07/2003
I-129 / L	01/07/2003
I-129 / Blanket L	01/07/2003
I-129 / O	12/05/2002
I-129 / P	01/13/2002
I-129 / Q or R	Current - R 09/04/2002
I-129 / TN	N/a
I-129F (fiancée)	10/11/2002
I-129 / E	09/03/2002
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	12/26/2002
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	11005/31/2002
I-765 / employment authorization associated with Hurricane Mitch TPS	7/85/2002
I-765 / employment authorization associated with El Salvador TPS	8/1/2002
I-765 / employment authorization while I-485 is pending C-9	10/01/2002
I-765 / all other employment authorization	9/30/2002
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](http://www.americanimmigrationlawyers.org)

Vermont Service Center Processing Times

Jurisdiction: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, Washington D.C. and West Virginia.

January 15, 2003

Form	Currently Processing
I-90 to replace lost, damaged or destroyed I-551	1/14/2002
I-102 for replacement/initial nonimmigrant arrival/departure form	Current
I-129 / H1B Cap	10/16/2002
I-129 / H1B Ext	10/16/2002
I-129 / H2A	Current
I-129 / (H2B, H3, O, P, Q, R)	10/11/2002
I-129S / Blanket L	11/11/2002
I-129F (Fiancée)	12/16/2002
I-212, I-601, I-612 Waivers	Current
I-130 Immediate Relative Classes	7/10/2002
I-130 Preference Classes	2/8/1999
I-131 Application for Travel Document	12/06/2002
I-140 Immigrant Petitioner for Alien Worker E11	3/25/2002
I-140 Immigrant Petitioner for Alien Worker E12	3/25/2002
I-140 Immigrant Petitioner for Alien Worker E13	6/4/2002
I-140 Immigrant Petitioner for Alien Worker E21 (National Interest Waivers: 4/1/2002)	05/31/2002
I-140 Immigrant Petitioner for Alien Worker E31, E32, EW3 (Nurses: 7/19/2002)	6/5/2002
I-360 Petition for Widowed/Special Immigration	7/3/2002
I-360 VAWA	07/05/2002
I-485 Application to Register Permanent Residence or to Adjust Status	10/15/2001
I-539 Application to Extend/Change Nonimmigrant Status	11/25/2002
I-687	N/A
I-698 Application to Adjust Status from Temporary to Permanent Resident	N/A
I-751 Petition to Remove Conditions on Residence	02/01/2002
I-765 Employment Authorization (C)(8)	Current

I-765 Employment Authorization (C)(9)	Current
I-765 Employment Authorization Other	11/07/2002
I-817 Application for Family Unity Benefits	N/A
I-821 Application for Temporary Protected Status - El Sal	4/4/2001
I-821 Application for Temporary Protected Status - Nicaragua/Honduras	Current
I-824 Application for Action on an Approved Application or Petition	2/22/2002
I-914 Application for T Non-Immigrant Status	01/02/2003
N-470, N-565, N-643	10/02/2002
N-600	09/13/2002

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

7. NEWS BYTES

The Sixth Circuit Court of Appeals recently rejected collateral challenges attempting to reopen the 1997 denaturalization order issued against Algimantas Dailide. Dailide, 82, was denaturalized for being a member of the Lithuanian Saugumas during World War II. The Saugumas, also known as the Lithuanian Security Police, cooperated with the Nazis in arresting, detaining, and executing Jews. The United States District Court for the Northern District of Ohio revoked Dailide's citizenship on January 29, 1997, and the Sixth Circuit affirmed this decision in 2000. Subsequently, Immigration Judge Mahlon F. Hanson ordered that Dailide be removed from the United States on May 22, 2002. Immigration Judge Hanson's removal order is currently on appeal.

A newly elected member of the Kansas State Board of Education says that she has received threats because of her outspokenness on whether undocumented children should be educated by the state. Connie Morris won her seat on the board after campaigning on a platform that included not allowing undocumented children to attend public schools.

A new report from the Center for Immigration Studies, which favors a reduction in current levels of immigration, shows that despite numerous efforts, support for Republican politicians remains slim among Hispanics in the US. The report, which is based on polls taken on Election Day last November, shows that Hispanic turnout was down from the 2000 election, and that one-third of Hispanics voted for Republican Senate candidates, which is similar to prior years. Perhaps the most important finding of the study is that there is no monolithic Hispanic voting bloc, and that, when adjusted for income and education levels, they tend to vote in the same patterns as the general population.

Two former managers at Tyson Foods, Inc. recently pled guilty to charges of conspiring to smuggle undocumented immigrants from Mexico to work at production facilities in the US. The pleas came only three weeks before three other managers and the company itself are scheduled to face trial on the same charges. A spokesperson for the company, which is the largest poultry producer in the country, said that the guilty pleas will no change the company's position, which is that it was not engaged in any illegal activities.

The Social Security Administration is researching a plan that would extend Social Security benefits to Mexican immigrants who have worked in the US. Under the plan, some immigrants who have not worked the ten years in the US required to obtain benefits would be allowed to use employment in Mexico, and it would be made easier for survivors to qualify for benefits. The US has similar agreements with 20 other countries, which have added about 100,000 Social Security beneficiaries. An estimated 40,000 Mexicans could benefit from such an agreement in the first year.

Two Indian men arrested on an Amtrak train in Texas on September 12th, 2001 and initially believed to be accomplices of the hijackers have now been deported. Officials claimed they found the two in possession of box cutters, hair dye and more than \$7,000 cash. After officials realized that the pair were simply petty criminals who had overstayed their visas, there was little left to do but deport them. The men dispute the government's claim that they were carrying box cutters and cash, and say the only reason they were arrested is because they are Muslim. They were detained for more than a year, and claim that they were verbally and physically abused while in custody.

Legal aid groups report that the number of immigration scams in South Florida is exploding as more and more people take advantage of tough new immigration rules. They often prey on people's hopes, promising they can help in a situation where an immigration lawyer would have only bad news. The groups say the state needs to be more active in punishing this activity, adding that because the clients often do not speak English, or are unsure of their immigration status, they are hesitant to go to authorities.

This week the Mexican government began presenting its case that the US should not execute Mexican citizens to the International Court of Justice. The Mexican government claims that 51 Mexican citizens currently on death rows in the US were not properly informed of their right to seek help from their consulate, a right secured by the United Nations' Vienna Convention. Before the Court considers the merits of the case, which could take years, Mexico is seeking an injunction to forbid the US from executing any Mexican citizens. Lawyers from the US argued that any injunction would interfere with the country's ability to enforce its criminal laws.

As part of Super Bowl security, the INS instituted Operation Game Day, a workplace enforcement action targeted at security guards and transportation workers in San Diego. At least 80 people have been arrested, primarily either for working without authorization or for having committed a deportable criminal offense. None of those arrested is believed to have any terrorist connections.

In 2000, Congress created a new nonimmigrant visa category for victims of immigrant smuggling rings who are willing to help the government prosecute the smugglers. This visa, the T visa, was expected to be well used, as Congress authorized up to 5,000 to be issued each year. Only 18 were issued during fiscal year 2002.

An INS attorney has filed suit against Attorney General John Ashcroft, claiming that she was singled out for retaliation for revealing an internal memo discussing the asylum case filed on behalf of Elian Gonzalez. Diana Alvarez filed her complaint earlier this month, alleging that her supervisor gave her negative performance reviews because of her support for granting the boy asylum and repeatedly made negative comments about Cuba-Americans. She also claims to have been retaliated against for testifying on behalf of another employee at the Miami office who claimed to have been the victim of anti Cuban bias. That case was settled last September.

The Census Bureau announced this week that Hispanics have passed blacks as the country's most numerous minority population group. As of July 2001, there were 37 million Hispanics living in the US (13 percent of the total population), and 36.1 million blacks (12.7 percent of the population). It has long been assumed that the Hispanic population would outnumber the black population because of higher birth and immigration rates, and the data show that this trend will grow stronger over the next decades.

A woman from Ghana who applied for asylum in the US, claiming that she would be subject to female genital mutilation as the queen mother of her tribe has been convicted by a federal court of perjury and passport fraud. The woman, who's real name is Regina Danson, claimed to be Adelaide Abankwah, and won asylum in 1999, in a decision that was hailed as a step forward in asylum law. While pursuing the asylum claim, INS officials remained skeptical, and after a federal court granted asylum, had enough evidence to support prosecution for fraud.

Natives of El Salvador living abroad sent nearly two billion dollars home during 2002, most of which came from the US. The amount was up about \$25 million from 2001, and accounted for 13.6 percent of El Salvador's gross domestic product.

A recent report from NAFSA, the primary organization of foreign student advisors, says that the US needs to do more to attract foreign students to US schools. The study was commissioned before the 2001 terrorist attacks, but does spend time discussing their impact. While the US remains the most popular destination for study outside of a person's home country, over the past 20 years the US's share of the foreign student population has dropped from 40 to 30 percent. According to the report, the US needs to stop relying on the idea that international students will always want to come to the US, and needs to develop a comprehensive strategy of recruiting foreign students. Among the suggestions is the development of a website that would be a clearinghouse for information about studying in the US.

Two members of the House of Representatives have called on Attorney General John Ashcroft to not deport 275 Korean immigrants who claim to have been victims of an immigration scam. Reps. Mike Honda and Zoe Lofgren, both Democrats from near San Jose, California, say that deporting the immigrants, who thought that they held valid green cards, without providing them an opportunity to show they deserve to remain in the US would be unfair. The immigrants had hired consultants who bribed an INS employee to issue the green cards. Most of the immigrants are professional who were eligible to obtain green cards.

INS officials this week arrested eleven workers at a naval base in Florida who were working without INS authorization. Dozens others are wanted on the same offense. None of the workers was employed directly by the US Navy, but rather worked for a contractor.

Federal officials announced this week that they were suspending a pilot program in which the federal building in San Francisco accepted Mexican matricula consular cards as evidence of identity. A growing number of banks and cities have agreed to accept the cards, which the government says it now has questions about. Those opposed to the use of the card say that it makes it too easy for undocumented immigrants to obtain services and status in the US.

In a recent decision, a federal court certified a class action lawsuit against the INS regarding its processing of adjustment of status applications filed by people who have been granted asylum. There is an annual limit of 10,000 asylees who can be granted adjustment, but even with this limit the INS has more than 20,000 pending cases that should have been approved by now.

8. INTERNATIONAL ROUNDUP

France and Germany Release Plans for Dual Citizenship

On Wednesday, French and German officials met in Versailles for their first joint session of parliament and unveiled a proposal for dual citizenship. The proposal will allow citizens in each country to hold passports in both lands, and also would allow French and German citizens to vote in each other's national elections. Also on the agenda was the appointment of representatives from each country to coordinate bilateral policy, discussion of harmonizing laws and plans to hold joint cabinet meetings. German Chancellor Gerhard Schroeder and French President Jacques Chirac promised more cooperation on foreign policy and said they would seek to adopt common positions on international issues, including immigration and asylum.

Deportee Escape An Embarrassment in Canada

A group of protestors roughed up an immigration official at Vancouver International Airport Tuesday and escaped with a woman being deported to Iran, Canadian newspapers report. Apparently, Kobra Nateghi was on an Air Canada flight with her 22-year-old son, Hassan Esmet, and another adult male, when Esmet became agitated and caused the pilot to order the plane cleared. The immigration commissioner was unable to keep Nateghi from escaping, as her supporters yelled for her to run. She turned herself in to police later Tuesday night. Citizenship and Immigration spokeswoman Janice Ferguson said that authorities would be reviewing the case to see if any changes should be made in the way deportations are handled.

Japan Considers Possible Flood of North Korean Asylum Seekers

Japan is readying itself for a possible flood of refugees from North Korea, as more people flee to China to seek asylum in Japan. The government is working on a plan that will minimize the number of refugees it grants permission to live in Japan, bracing for a deluge of North Korean asylum-seekers. So far, Japan has adopted a policy of asking the Chinese government to hand over detainees from North Korea if Japanese citizenship has been verified, but the government has yet to decide whether to accept non-Japanese refugees from North Korea who have been assisted by nongovernmental organizations.

9. APPROPRIATIONS MIXUP RESULTS IN LOWER INS FEES

Today marked the last day that the US asylum and refugee programs are operational. An unexpected last minute change in the homeland security bill has left them without funding. Historically, the fees for immigration benefits have included a surcharge of about \$50, which is used to fund processing of asylum and refugee applications, because the applicants themselves do not pay a fee. Advocates have long sought to have the government directly fund this processing, and has secured a provision providing such funding. But as final changes were made to the language of the bill, this funding was cut, while language eliminating the surcharge was retained.

The practical effect of this, apart from the fact that processing asylum and refugee applications will be uncertain until funding is provided, is that fees for other INS

applications will go down. The INS says that rather than reject applications accompanied by the stated fee (including the surcharge), it will accept these cases and set up a system to provide refunds.

The new fees are listed below.

Form	Description	New Fee	Old Fee
I-17	Petition for Approve of School	\$167	\$230
I-90	Application to Replace Alien Registration Card	\$95	\$130
I-102	Application for Replacement/Initial Nonimmigrant Arrival/Departure Document	\$73	\$100
I-129	Petition for a Nonimmigrant Worker	\$96	\$130
I-129F	Petition for Alien Fiance(e)	\$81	\$110
I-130	Petition for Alien Relative	\$96	\$130
I-131	Application for Travel Document	\$80	\$110
I-140	Immigrant Petition for Alien Worker	\$99	\$140
I-191	Application for Advance Permission to Return to Unrelinquished Domicile	\$142	\$195
I-192	Application for Advance Permission to Enter as a Nonimmigrant	\$142	\$195
I-193	Application for Waiver of Passport and/or Visa	\$142	\$195
I-212	Application to Reapply for Admission to the US after Deportation	\$142	\$195
I-485	Application to Register Permanent Resident of Adjust Status	\$186	\$255
I-526	Immigrant Petition by Alien Entrepreneur	\$290	\$400
I-539	Application to Extend/Change Nonimmigrant Status	\$102	\$140
I-600/600A	Petition to Classify Orphan as an Immediate Relative/Application for Advance Processing of Orphan Petition	\$332	\$460
I-601	Application for Waiver on Grounds of Excludability	\$142	\$195
I-612	Application for Waiver of the Foreign Residence Requirement	\$142	\$195
I-751	Petition to Remove the Conditions on Residence	\$105	\$145
I-765	Application for Employment Authorization	\$88	\$120
I-817	Application for Family Unity Benefits	\$104	\$140
I-824	Application for Action on an Approved Application or Petition	\$104	\$140
I-829	Petition by Entrepreneur to Remove Conditions	\$286	\$395
N-400	Application for Naturalization	\$188	\$260
N-565	Application for Replacement of Naturalization/Citizenship Document	\$113	\$155
N-600	Application for Certificate of Citizenship	\$134	\$185
N-643	Application for Certificate of Citizenship on Behalf of an Adopted Child	\$105	\$145

10. INVESTIGATION APPEARS TO CLEAR MEXICAN CONSULAR OFFICIALS OF WRONGDOING IN IMMIGRANT SMUGGLING INCIDENT

Earlier this month, Mexican and US officials were in a rush to explain what happened following a tragic crash in which two undocumented immigrants died after a high-speed chase by the US Border Patrol. Following the incident, many accused officials from the Mexican consulate in San Diego of impersonating INS personnel and attempting to help a number of those detained, including the alleged smuggler, escape. These allegations, officials from the hospital and the California Highway Patrol say, have no support.

While the FBI and the INS, which are also investigating the event, will not reveal anything about it, other information indicates that the Mexican consulate did nothing wrong. The US government has confirmed that it has issued INS identification documents to consular officers, refuting the idea that they were carrying fraudulent documents. A hospital spokesperson has confirmed speaking with someone from the Mexican consulate, but says that they made no effort to obtain the release of any of the injured migrants. The hospital says that those who left did so after they were treated for their injuries, and that they were not under arrest or in any form of custody when they left.

It appears that the tragedy was manipulated by a radio host and former Mayor of San Diego, Roger Hedgecock. On his radio program he accused Mexican consular officials of posing as INS agents and interfering with the investigation. Later, after a furor was created, a CHP officer at the scene said that no one tried to interfere.

Both the driver and another man have been charged with two counts of murder, as well as a number of other smuggling related charges.

11. REPORT SHOWS INS SECURITY AT AIRPORTS STILL LACKING

A new report from the Justice Department Office of Inspector General finds that INS security procedures at US airports are deficient. The report is a follow-up on a 1999 audit that found problems at all 42 of the airports surveyed. The new report focused on 12 airports that account for a significant percentage of people admitted to the US. Which airports were surveyed, as well as details about some of the problems, has not been released for security reasons.

According to the report, the INS failed to implement any of the suggestions from the 1999 audit, had not discussed the problems with airlines, and had not even told airport inspectors about the results of the audit. In addition to many of the same problems, the new report found many other problems, including inadequate testing of security and communications systems. The report says that the primary cause of these problems is that the INS does not regard airport security as its responsibility.

One of the most significant problems found during the prior audit is that inspection areas, including rooms that are used to hold people for secondary inspection, are inadequately guarded. This was blamed in large part on the INS's unwillingness to pressure airlines and airport authorities to comply with the relevant provisions of the Immigration and Nationality Act. These problems continued to exist as of the time of the new audit, in large part because rather than act on the recommendations made by the Inspector General, the INS began its own audit of airport security.

INS personnel defended the agency, saying that its ability to correct problems is largely dependent on airlines and airports, and that the powerful lobbies representing

these industries make it impossible for the INS to force them to comply with facilities requirements. However, it is likely that with the renewed importance of border security, the new Homeland Security Department will work to improve security at these facilities.

12. SPECIAL REGISTRATION UPDATE

Pakistani Foreign Minister Khursid Mahmood Kasuri has said that he will make a formal appeal to the Bush administration to exempt certain Pakistani nationals from the INS special registration program. The registration requirement has created a furor in Pakistan, which has been a key US ally in the war on terrorism. Kasuri said he hoped to reach some agreement whereby Pakistanis with a long history in the US would not be required to register. The Bangladeshi Foreign Minister has made a similar request.

At the beginning of the special registration period for the third group, INS officials say that more than 24,000 people have registered so far, with more than 1,170 arrested and detained when they appeared to register. Officials also say that about one in ten of those who have reported could face deportation, and about 2,500 have been put in proceedings. A Justice Department attorney says that the program has led to the arrests of three people suspected of having terrorist connections. Under a similar program calling for registration upon entry to the US, 30,828 people had been registered as of last week. Inspectors had denied entry or arrested 330 people.

13. GUEST COMMENTARY – LET'S ROLL: GOING ON THE OFFENSIVE IN 2003, BY GARY ENDELMAN

At a time when the disturbing news of special registration is so much with us, it is natural and quite easy to think that this is all there is. That would be a very large mistake. It does no disservice to the genuine anguish over the Ashcroft vendetta to realize that the drive for true immigration reform whose momentum on September 10th seemed well-nigh irresistible can still be revived if we keep our eye on the prize. The signs are everywhere if we have the eyes to see them. Let us not walk sightless among miracles that can be ours in 2003.

Just a few examples should make the point. This past week, White House Press Secretary Ari Fleischer said, in response to a question from the press, that President Bush remained a strong supporter of an extension of Section 245(i) of the Immigration and Nationality Act which allows people with minor immigration problems, such as a temporary lapse in the maintenance of lawful status, to apply for the green card without returning to their home countries. This provision had actually passed the Senate and was before the House of Representatives for a vote on its extension on September 11th, but the vote was cancelled when Congress fled in the wake of the terror attacks. Fleischer noted that President Bush supported bringing back Section 245(i) because it was "an important immigration initiative to help give people opportunities to come to the United States where willing employers want and have positions for immigrants," and that the President hoped the incoming Congress, controlled by his own party, would address the issue. President Vicente Fox of Mexico, who has staked the future of his presidency on winning concessions

from the White House to protect undocumented Mexican workers in the United States, has recently served notice on the Bush Administration that he wants to step up the pace of negotiations stalled by September 11th and all that has come since

A guest worker program on a wide scale is coming. Immigration reform was listed as a signature issue for the President's 2003 legislative agenda in an internal White House document whose contents were leaked to the Associated Press by several senior White House officials during the recent holiday sojourn in Crawford, Texas. At the same time, former House Speaker Newt Gingrich identified immigration as a core GOP issue in a recent Wall Street Journal op ed piece. Indeed, in the wake of the Trent Lott disaster, trying harder to bring Hispanic voters into the Republican fold, not only makes good sense as an electoral outreach strategy for 2004 but is an excellent way to burnish the GOP reputation as a party of inclusion among key suburban Anglo voters who are uncomfortable voting for a party identified with intolerance. Even Republican Congressman Tom Tancredo of Colorado, the high priest of nativism not normally known for any pro-immigration views, is considering sponsoring a bill that would amend the Immigration and Nationality Act to establish a one-year guest worker program with a one-year renewal option. The Fortress America crowd accepts the reality that the status quo is untenable and now is aiming to limit the size and scope of the guest worker initiative, most especially with an eye towards stripping it of any long-term benefits.

2003 is the year when a market-driven immigration policy can become institutionalized. The guest worker proposal is but the first installment. The reasons are not hard to find. The baby boomers are going to retire soon and there are not enough workers to replace them. There is neither the political will nor the national consensus to either cut Social Security benefits or raise eligibility thresholds. Immigration is the only viable way to deal with the graying of America. The Center for Labor Market Studies at Northeastern University just completed a study for the National Business Roundtable entitled "Immigrant Workers and the Great American Job Machine: The Contributions of New Foreign Immigration to National and Regional Labor Force Growth in the 1990s." As ably reported by leading immigration attorney Greg Siskind, the Center for Labor Market Studies concludes that "the economic success of the 1990s was greatly dependent on new immigrant workers, particularly male immigrant workers." During the decade of the Nineties, immigration accounted for over 40% of America's population growth; over 50% of the nation's labor growth and almost 79% of the surge in the nation's male civilian work force.

As awful as September 11th was, as profoundly chaotic as its continuing effects are, we owe it to our clients and the nation to take a step back and pause to reflect how many things have not changed. Our demographic destiny is still before us; the business cycle has not been repealed. The reality of the global marketplace still speaks as loudly as ever. We cannot have a free movement of ideas and capital without a controlled but open movement of people and talent across national boundaries. The need to repeal employer sanctions has not gone away. What better way is there to eliminate the underground economy that deprives the national treasury of badly needed revenue and bring those who dwell in the shadows into the sunlight of public inspection? Is it possible to have a robust national security without a vibrant economy that can draw upon the talents of all who are here? The answer can come in 2003 when the Congress turns its back on the mistake of 1986 and consigns the I-9 employment verification form to the dustbin of history where it belongs. This can and should happen not to help foreign workers, or harried employers; not to appease ethnic groups, wacky liberals or left-wing media elites.

Employer sanctions must go to protect the nation. Its repeal is not only justified, but required, in the name of national security.

Next October 1, the H1B temporary worker quota will fall from the current 195,000 to its pre-1998 level of 65,000 unless Congress acts to renew this controversial provision of the American Competitiveness and Workforce Improvement Act. If history is any guide, corporate America and the organized immigration bar will repeat their past mistakes and make the maintenance of the H1B quota their #1 legislative priority for 2003. Don't do it folks. Now is the time to escape from the never-ending cycle of quick-fixes that do not solve our immigration problems but merely postpone the day of reckoning. In 1998, the architects of getting more H1B numbers dismissed the possibility of raising the immigrant visa numbers, replacing the crazy quilt system of labor certification with a labor market control scheme that made economic sense, eliminating the diversity visa lottery, and cutting the gordian knot of chain migration that uses up priceless visa slots that should go to employment-based immigrants who can enrich the nation so generously accepting them. There were those minority voices arguing against making the Faustian bargain that sacrificed all of these things to the all-consuming H1B deity, who warned that leaving these unsolved problems to another day was playing high-stakes poker with the future. What was the response from those in the know? Accept political realities, get what we can achieve now and come back to fight bigger battles when the chances were more promising. Well, we waited and the future brought not a more pleasing political landscape but a collapse of dot.com prosperity and hijacked airplanes crashing into the symbols of economic and military power. This time let's do things a bit differently. In 2003, the forces of meaningful immigration change can, and must, go on the offensive. Let's Roll!

14. LAWSUIT FILED AGAINST INS TO STOP DEPORTATIONS BASED ON APPLICATIONS FILED BY IMMIGRATION NOTARIOS

Last November advocates filed a class action suit against the INS federal court, alleging that thousands of illegal immigrants were defrauded by phony immigration consultants and were not guided by INS officials who were supposed to assist them. It is believed that up to 5,000 improperly filed adjustment of status applications were accepted by the INS, and the undocumented immigrants could be deported after being defrauded by unscrupulous individuals posing as immigration attorneys. The plaintiffs allege that they have been negatively impacted by Chicago INS office's policies that have resulted in the loss of their files and processing fees, and ultimately the use of their applications as a basis to institute removal proceedings.

Phony immigration consultants, known in Spanish as notarios, have tricked immigrants into sending improper paperwork to the INS. The situation is partly due to the fact that the Spanish word "notario" translates into the English word "judge" or "legal official." Thus many unwary immigrants have fallen into this trap, believing that the notarios are responsible officials who are in a position to help them legally, and in an official capacity.

The lawsuit, filed by the Mexican American Legal Defense and Educational Fund (MALDEF) in Chicago, and the Midwest Immigrant and Human Rights Center, seeks to recoup the INS processing fees of at least \$300 per applicant and to stop pending deportation proceedings. The complainants allege that the changes in INS policy permitted these notarios to continue to defraud the immigrant community. Up to

5,000 undocumented immigrants, most of whom do not speak or read any English at all, face deportation because they submitted forms between 1997 and 2001 after being defrauded by notarios. Although most of the complaints are from the Mexican community, there have also been complaints from Polish, Chinese, Korean, and other ethnic groups.

The INS has tried to crack down on the notarios who prey on the ethnic communities. INS has aired public service ads on Spanish television stations, as well as running newspaper ads in ethnic newspapers, distributing fliers and meeting monthly with various community groups and agencies to advise them of potential scams. Although the attorneys for the immigrants have said that they do not believe that the INS changed its policy to lure undocumented immigrants, but they said that the damage was still done.

The INS has responded by stressing that the agency can only do so much and that it is the applicant's responsibility to educate themselves. Those immigrants who inform the INS of having been defrauded still remain subject to deportation, even if they help put a notario behind bars.

15. LEGISLATIVE UPDATE

[H.R. 152](#), the Immigration Adjustment Act of 2003, introduced by Rep. Ed Pastor (D-AZ), would allow people who entered the US before January 1, 2001 and have lived in the US for five years to apply for adjustment of status.

[H.R. 184](#), the Fairness to Immigrant Veterans Act of 2003, introduced by Rep. Jose Serrano (D-NY), would make immigrants who have served in the US armed forces and who are deportable eligible for cancellation of removal.

[H.R. 189](#), the Baseball Diplomacy Act, introduced by Rep. Jose Serrano (D-NY) would make it easier for Cuban athletes to come to the US to play professional baseball.

[H.R. 200](#), the U.S. Employee, Family Unity, and Legalization Act, introduced by Rep. Luis Gutierrez (D-IL), would change the registry date from January 1, 1972 to January 1, 1998 and would continue advancing the date by one year each year until 2009. It would also allow people in deportation proceedings to use any form of relief that was available at the time they committed the deportable offense. The definition of aggravated felony would be relaxed, and expunged and convictions otherwise vacated would not be given effect for immigration purposes.

[H.R. 201](#), introduced by Rep. Bart Stupak (D-MI), would allow people to file applications to temporary non-agricultural labor certifications up to 180 days before the workers are needed.
