

Siskind's Immigration Bulletin  
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1. Openers

Dear Readers:

This week the State Department delivered news that will mean more misery for the American travel industry. Beginning August 1st, nearly all people coming to the US on visas will have to be interviewed personally at a US consulate. The Department's concern about letting in the next terrorist on a visa without an interview has led them to this point. Couple that with a separate new policy that will require all nationals of Visa Waiver policies that may have honorable intentions may actually have devastating effects in ways that our government may not have anticipated. Representatives of the travel industry have stated that the new plan will cost the country billions of dollars in lost tourism spending and result in the loss of thousands of jobs.

What I wonder is just how much the policy will really do to stop a terrorist. Does a consular officer really have the background to be able to size someone up in a couple of minutes in order to determine that they are a threat? Would it not be better to spend the millions of dollars this policy will cost to beef up the technology resources needed to quickly and effectively screen visitors to this country? At some point, we need to run a cost-benefit analysis to determine where we should be spending limited resources in the war on terrorism.

Many of you may have noticed that you are getting this issue on a Monday instead of on Friday or Saturday. We've decided to switch to this new publishing day because it gives us a chance to catch up on the writing that often becomes tough during the busy work week. Our publication is put out by working immigration professionals who deal with client matters every day. The new schedule will allow us a little extra time to get the publication finished each week if we have the weekend available to finish up our writing tasks.

Finally, 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 – Social Security No-Match Letters

The following article is the second in our series on Social Security and Immigration.

### **No-Match Letters**

Every year, the SSA processes W-2 forms and credits social security earnings to workers. However, if a name or social security number does not match the SSA records, the agency frequently issues a no-match letter to the employer and employee in an attempt to obtain corrected information. Recently, the SSA has not been able to match employee information for 6-7 million workers a year. The social security earnings for these individuals go into a suspense file until the SSA can resolve the discrepancies. Presently, \$280 billion dollars are stored in the earnings suspense file.

The Social Security Administration (SSA) has redesigned the system in 2003 for issuance of "no-match" letters in an attempt to correct problems faced in previous years. In order to reduce the volume of letters sent, the SSA will only send no-match letters to employers with more than 10 employees with mismatched information or for whom mismatched employees represented ½ of 1 percent of the W-2 forms filed with the SSA. With this system, the SSA plans to only send out about 130,000 letters, as opposed to the overwhelming 900,000 that were sent out in 2002. Also, the SSA will send a no-match letter to all no-match employees about two to three weeks before sending the no-match letter to the employer as long as there is a valid address for the employee.

Within the letter, there will be no more language that may be construed as threatening, stating that the employer will possibly be subject to an IRS penalty. This language led to many problems in previous years. Scared employers immediately fired no-match employees upon receiving the letters, some employees were given a limited time frame to correct the problems, and some no-match employees simply quit. The present letter states that the employer is given 60 days to correct the discrepancy and is advised that taking adverse action against an employee could violate state and federal law, subjecting the employer to legal consequences. In addition, this year's letter clearly states that it is not a statement about the employee's immigration status.

While the IRS is authorized to fine employees \$50 for each incorrectly reported social security number, the agency has been waiting to begin enforcement until it develops a program for imposing penalties. The IRS had planned to begin issuing fines for 2002 in 2004, but recent reports indicate that the agency may delay this process another year. Presently, the regulations carve out safe harbors for some employers. The following categories will not be subject to fines:

- If less than ½ of 1% or less than 10 of the W-2 forms issued by a single employer do not match SSA records, the IRS will not assess penalties against the employer.
- The IRS will not fine an employer for incorrect information on the W-2 forms if they are based on a duly executed W-4 form and the employer has shown due diligence in trying to obtain the correct information.

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### 3. Ask Visalaw.com

*If you have a question on immigration matters, write [Ask-visalaw@visalaw.com](mailto: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.*

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Q - I am a US permanent resident and I received my green card a year back. I now wish to change my current employer. Can my current employer revoke my green card??

A - No. Only the BCIS could do that and they would do that only if they believed you got your green card through fraudulent means. That sometimes means switching too quickly from one employer to another after the green card is approved. But that is almost never the case where the green card was obtained through adjustment of status since you are allowed to switch in many cases after the adjustment application is pending 180 days. In cases where a green card is received through consular processing, you will need to be more careful. There is no actual number of days you need to stay with an employer, but most immigration lawyers would probably agree that a year is plenty of time to allow before switching. Good luck.

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Q - I got married in Jul 99' and applied for Perm Res. In Feb 2002. Will I be classified as a conditional resident if granted Perm res?

A - You will be granted unconditional permanent residency since you have been married more than two years.

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Q - My mother petitioned me under F2B category in September 1995. She became a US citizen in July 1996 while I got married in July 1997. My petition is now current. Am I still qualified for this petition? Can I apply for adjustment of status since I'm already in the US on H1B visa?

A - You're fine. You automatically converted to F1 in July 1996. And then you automatically converted to F3 in 1997. That category is up to March 15, 1997 now so you are just a few months away from being eligible to apply for adjustment of status. Let me know if you are interested in our handling that petition for you.

\*\*\*

Q - I am currently in H-1 B status and I would like to travel outside of the US. Will I need to apply for a visa once I exit the US or can I just use my approval letter, a letter from my employer and my I-94 to re-enter the US? If I need to get a visa, are there any risks of that visa being denied and jeopardizing my work situation? Is there a way I can apply for a visa from the US or go have my passport stamped before I leave the country?

A - Unless you have an unexpired H-1B visa in your passport or you are Canadian, you will need a visa stamp. You will have to appear at a consulate to get the visa unless you are just revalidating an already issued visa in the US. As for how you process, you need to check the rules of the consulate that will be processing your case. As for risks of denial, I really could not say without reviewing the facts of your case with you.

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Q - I am a nineteen year old who's just completed first year of University in US the cost of which was paid for by my parents. Some eight years ago, my family and I were granted permanent residence to live in the US. We settled in the US for a brief period before we moved on to Canada where I attended school until last year when I attended university in the US. I had registered with the University as a permanent

resident since I am still in possession of the Green Card. The GC is due to expire next year. I would like to know if it is possible to renew the GC without having it revoke even though my parents do not reside here. I would very much like to continue with my studies in the US and to live and work thereafter. I am presently working on a summer job and I just want to know what I am doing is the right thing. Would you advice me if there is something I could do in order to legalise my residence here.

A - Your green card is independent of your parents. And since you are here full time, you should be fine. In fact, I would suggest you try and spend most of your time in the US so that you won't lose your green card due to abandonment.

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Q - May a student amend her Form 538 if inadvertently the DSO stated 38/HRS/WK for the optional practical training position and the position is only 20/HRS/WK? How does the amendment get filed, by mail or online or fax for the quickest results in New York?

A - I-538 forms are no longer valid and in use. The last date for their use was February 14, 2003, the mandatory compliance date for SEVIS. Every OPT application filed after that date must be done through SEVIS, and if there was a mistake, a correction must be made through SEVIS.

If this case was filed before that date and if is still pending, then it really depends on which Service Center it is at. In pre-SEVIS cases, DSO's used to endorse 3 places, front of the I-538, back of the I-538, and the last page of the I-20. The Service Centers usually went with the DSO endorsement on the back of the I-20, than the endorsement on the I-538. If the DSO was sure that she made a mistake and if she was certain, knowing the practices of the Service Center, that it was going to result in an incorrect date, the only way to intervene was by the DSO's regional NAFSA CIPP-RR who had a direct link to the NAFSA liaison at the Service Center.

Service centers are usually reluctant in amending pending OPT cases. For instance, for Texas Service Center, we were always recommended to withdraw the case and file a new application if it was not too late. New York falls under Vermont, therefore the case must be filed in there. Therefore, I would recommend the DSO to contact her Vermont NAFSA liaison/ CIPP-RR for immediate help. Because this is a DSO certification, it must be corrected by the DSO.

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Q - If an application for green card was made in 1995 by a parent for her unmarried children under 21 yrs, but now the affected children are all either over 21 or married. Does it mean that the children no longer qualify for the visa? or is it based on when the application was filed?

A - When the children turned 21, they automatically moved from the 2A category to the 2B category. But their priority date - the date they filed their applications - is still the original filing date. So it is as if the application for the over 21 year old child was filed on the original date. No re-filing is necessary either.

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Q - I'm in the process of getting divorce and also want to apply for the citizenship. How can I get back my single last name?. In the N400 form there is an option to change names. Should I use this option or should I apply normally and when the interview comes present my divorce papers? How does this works.

A - You can put your maiden name on the N400. Just make sure to list your married name under "other names used". When you go to your interview, present your divorce decree. At that time, you can change your name to anything you like.

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Q - I'm on H1 visa and for some family reasons, I would like to take a week off from work. I do not have any vacation time left and would like to take an unpaid leave. As per the law, am I prohibited to take a leave without pay, or its alright its my company feels ok? I just want to make sure that the immigration law does not restrict me from doing that...

A - The law is not really very clear here, but leaves of absence are generally permitted on an H-1B if they are consistent with the rules applicable to American employees at the company and your job remains intact. What would not be okay is if the BCIS determines that your leave of absence is really a form of benching you without pay because the company lacks the work to employ you. But maternity leaves, sick leaves and similar unpaid leaves of absence are usually permitted.

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#### 4. Border News

United States authorities captured eleven men believed to belong to a terrorist, Anti-American group. The men, nine of whom are United States citizens, are believed to be part of an extremist Muslim organization, Lashkar-e-Taiba, sometimes called Lashkar-e-Tayyiba. The primary goal of this organization, which is named on the State Department's list of terror organizations, is to drive India out of the Kashmir territory.

Six of the suspects were taken into custody in Pennsylvania, Maryland and Virginia, while two others were already in custody. Three of the men are believed to be in Saudi Arabia. The eleven men were charged in a 41-count federal indictment with conspiring to "prepare for and engage in a violent jihad" against targets in the Philippines, Chechnya and Kashmir. Authorities claim that the men were inspired to violence by a cleric while meeting at an Islamic center in suburban Washington.

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A trial for members of an Arivaca-based border watch group charged with conspiracy to smuggle illegal border crossers has been delayed. A federal indictment was filed October 2002 and alleged that two Border Watch members and a Mexican national entered into a smuggling conspiracy from early September to October 2002.

On the day Border Patrol agents stopped Palmanita Fleming, a Border Watch member charged with conspiracy, Fleming told the agents that she picked the illegal border crossers up for humanitarian reasons. Several of the illegal crossers told

agents later that day, however, that Fleming told them to get into her vehicle and lie down and cover up so that the U.S. Border Patrol would not see them.

Another Border Watch member was stopped the same day with four illegal entrants in his car. Pedro Jesus Armenta-Vega told investigators he had worked for a month for Miguel Angel Guzman, president and founder of Border Watch, transporting 22 illegal border crossers for a fee of about \$200 each. He also claimed Fleming was a driver for Guzman.

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Cuban hijackers have recently stepped up efforts to get to the United States. In recent months, Cuban planes and ferries have been hijacked and brought to the United States. Under American immigration law, Cubans who reach U.S. soil are usually allowed to stay.

A federal case currently on the docket charges Adermis Wilson Gonzalez with hijacking a Cuban airplane to the United States with bogus grenades three months ago. The plane departed March 31 from Cuba's southern coast for a thirty-minute flight to Havana. Toward the end of the flight, Gonzalez jumped from his seat, waved ceramic grenades, and demanded to be taken to Florida. The plane did not have enough fuel, and landed in Havana instead. Gonzalez negotiated with Fidel Castro and American diplomat James Cason, but to no avail. The plane sat in Havana for 12 hours before Gonzalez forced the pilot to take off for Florida. When the plane landed, Gonzalez was taken into custody.

U.S. officials hope that the trial will deter further Cuban hijackers.

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Two members of a human-smuggling ring pleaded not guilty to charges relating to the deaths of 19 of more than 70 illegal immigrants who were packed in the trailer of a 19-wheeler. They died of suffocation, dehydration, and hyperthermia. Fourteen people have been indicted on charges linking them to the smuggling ring.

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The United States Coast Guard spotted and returned 146 Haitian migrants on a boat last Wednesday, and 319 Haitian migrants on a vessel last Thursday. Both boats were off the coast of the Bahamas. It is United States policy to return migrants found at sea after brief interviews by immigration officials on the boat.

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## 5. News From The Courts

### **Garcia-Lopez v. Ashcroft**

Garcia-Lopez, a native and citizen of Guatemala, appeals a final order of deportation by the Board of Immigration Appeals (BIA). The 9<sup>th</sup> Circuit Court of Appeals reversed the order and held that the state court's declaration that Garcia-Lopez's offense was a misdemeanor is binding on Garcia-Lopez's subsequent immigration hearings.

Garcia-Lopez pled guilty to grand theft in 1992 for stealing a purse. The state court judge suspended the proceedings and ordered probation for a period of three years, the first 180 days of which were to be spent in the county jail. He was later released to a halfway house and placed on probation. However, while on probation, Garcia-Lopez moved to Seattle for employment. When he returned to California in 1996, the same state court judge issued an order reinstating Garcia-Lopez's probation, designating the grand theft offense to which Garcia-Lopez had pleaded a misdemeanor, and dismissing the charges.

While Garcia-Lopez was in Seattle, he was detained by immigration authorities, who in turn initiated deportation proceedings. In 1995, he conceded deportability, but applied for a suspension of deportation, which was granted. The immigration judge determined that despite the conviction, the fact that it was classified as a misdemeanor required that he be allowed a suspension. Also, he met the remaining requirement for suspension, including finding that the deportation would be an extreme hardship on either Garcia-Lopez or a close member of his family. The INS appealed, and the BIA sustained the appeal, determining that Garcia-Lopez did not meet the requirements of the petty offense exception.

Since the statute in question is part of the California Penal Code, the 9<sup>th</sup> Circuit did not have to give any deference to the BIA's interpretation of the statute. The statute that Garcia-Lopez was convicted under is considered a "wobbler" statute because the offense can result in a wide range of punishments that can provide for either a misdemeanor or felony convictions.

The Court held that applying United States v. Qualls, 172 F.3d 1136, 1137 (9<sup>th</sup> Cir.1999), and United States v. Robinson, 967 F.2d 287, 293 (9<sup>th</sup> Cir. 1992), Garcia-Lopez was never subject to a judgment imposing punishment, therefore Section 17(b)(1) of the California Penal Code is inapplicable to his case. This section states that any sentence other than imprisonment in the state prison automatically converts a felony to a misdemeanor. Since Garcia-Lopez was issued probation, the Court ruled that he did not fall under this category.

Then, Garcia-Lopez asserted that his conviction did fall under Section 17(b)(3) of the California Penal Code. This section states that a wobbler offense "is a misdemeanor for all purposes...when the court grants probation to a defendant without imposition of sentence and at the time of granting probation, or on application...thereafter, the court declares the offense to be a misdemeanor." The Court compared Lafarga v. United States, 170 F.3d 1213, 1215 (9<sup>th</sup> Cir. 1999), where the Court held that a misdemeanor conviction fell within the petty offense exception in a nearly identical fact pattern. Therefore, in light of Lafarga, the Court held that Garcia-Lopez's conviction clearly falls within the bounds of the petty offense exception under 8 U.S.C. 1182(a)(2)(A)(ii)(II). The Court relied on precedent to determine that a state court's designation of a criminal offense is binding on the BIA for purposes of determining whether there has been a conviction under the INA. The Court determined that because the offense that he was convicted was a misdemeanor, Garcia-Lopez's maximum possible penalty under California law was less than six months. Therefore, Garcia-Lopez qualified for the petty offense exception under 8 U.S.C. 1182(a)(2)(A)(ii)(II).

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## **Zheng v. Ashcroft**

Li Chen Zheng, a Chinese native and citizen, appealed a Board of Immigration Appeals (BIA) regarding an interpretation of acquiescence as used in 8 CFR 208.18. The BIA held that acquiescence requires that government officials “are willfully accepting” of torture. The 9<sup>th</sup> Circuit Court of Appeals concluded that the BIA misinterpreted congressional intent, which required only “awareness,” and not to require “actual knowledge” or “willfully acceptance” in the definition of acquiescence.

8 CFR 208.18 (a)(1) states: “acquiescence of a public official requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his or her legal responsibility to intervene and prevent such activity.” Zheng claimed relief under Article 3 of the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which states that the United States will not “expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture.” Zheng argued that he needed protection in the U.S. because he testified against the smugglers who took him to Guam and because his family had a low place in society because they chose not to use birth control. He stated that the Chinese government would not protect him from these smugglers.

The Court held that the BIA’s interpretation of the term acquiescence to require that Zheng must prove that the government is “willfully accepting of” torture, instead of proving that public officials are aware of the torture, impermissibly narrows Congress’ clear intent in implementing relief under the Convention Against Torture.

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## **Toia v. Fasano**

The Court of Appeals for the Ninth Circuit decided on June 30 the issue of whether the provision of the Immigration Act of 1990 that bars aggravated felons from applying for relief under Section 212(c) of the Immigration and Nationality Act applies to aliens who pled guilty prior to the enactment of the Act. The court held that it did not.

Section 212(c) granted the Attorney General the power to grant discretionary waivers of relief from deportation for lawful permanent resident aliens who had accrue seven consecutive years of lawful unrelinquished domicile in the United States.

The petitioner in this case came to the United States as a child and obtained permanent residency. In 1989, Toia entered a guilty plea for conspiracy to possess a controlled substance with the intent to distribute. The INS and BIA denied Toia’s application for relief under Section 212(c). Toia appealed to the 9<sup>th</sup> Circuit Court of Appeals.

The court held that pursuant to *St. Cyr*, “‘considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly’ so that ‘settled expectations’ are not ‘disrupted.’” “Extinguishing the availability of Section 212(c) relief for aliens who pleaded guilty with the expectation that they would be eligible for such relief upsets ‘familiar considerations

of fair notice, reasonable reliance, and settled expectations.” *St. Cyr*, 533 U.S. at 316.

Permanent resident aliens who pled guilty prior to the 1990 Act and who otherwise would have been eligible for the Section 212(c) relief but for the aggravated felon bar may still apply for Section 212(c) relief.

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### **Kankamalage v. INS**

In 1988, Jayantha Kankamalage pleaded guilty to robbery. At the time, conviction for this offense did not disqualify him from consideration for asylum. In 1990, a new regulation made him ineligible for asylum. Referring to *INS v. St. Cyr*, 533 U.S. 289 (2001), the Court held that the 1990 regulation could not be applied to Kankamalage.

Sri Lankan citizen Kankamalage entered the U.S. in 1982. Six years later, he pleaded guilty to robbery and was sentenced to two years in prison. He was released after a year and turned over to INS. In 1989, INS began deportation proceedings against him, declaring that he had overstayed his nonimmigrant visitor visa. Kankamalage filed an application for asylum and withholding of deportation. In a 1991 hearing, Kankamalage admitted that he had overstayed his visa. The judge denied withholding deportation, ruling that Kankamalage had not proven that he would be persecuted if he returned to Sri Lanka. The judge did find that Kankamalage was eligible for asylum because he had shown a “well-founded fear of future persecution.” However, the judge denied asylum, citing Kankamalage’s conviction and prior drug use.

Kankamalage appealed the decision to the Board of Immigration Appeals (BIA), but the BIA dismissed the appeal in 1996. In 1999, Kankamalage petitioned the Ninth Circuit to review the BIA’s decision. INS agreed that the BIA applied incorrect legal standards in its decision and in the case was remanded to the BIA in 2000. The BIA recognized its error, but dismissed the appeal again on the grounds that Kankamalage had committed a “particularly serious crime” and was ineligible for asylum.

The Ninth Circuit decided to remand the case to the BIA, stating that although the BIA is not prohibited from considering the robbery conviction when it decides whether or not to grant asylum to Mr. Kankamalage, the conviction does not automatically disqualify Kankamalage from consideration for asylum.

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#### 6. Government Processing Times

Texas – <http://www.visalaw.com/texas.html>

California – <http://www.visalaw.com/california.html>

Missouri – <http://www.visalaw.com/missouri.html>

Nebraska – <http://www.visalaw.com/nebraska.html>

## 7. News Bytes

The Bureau of Citizenship and Immigration Services (BCIS) announced that Temporary Protected Status (TPS) for El Salvador will be extended for an additional 18-months until March 9, 2005. The decision came as part of ongoing efforts to assist El Salvador in its recovery from the devastating earthquakes that affected the nation.

This TPS extension, which covers approximately 290,000 Salvadoran registrants, will take effect September 9, 2003 until March 9, 2005. The BCIS will provide additional information and answers to frequently asked questions next week.

Re-registration applications will not be accepted before the registration period officially begins.

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Several attorneys expressed concern this week about a crackdown on Religious Worker petitions in Oklahoma, Dallas, and Houston that indicate a pattern of investigation by local investigations officers, as well as a constant stream of Request for Evidence (RFE) letters followed by denials from the Texas Service Center. Attorneys complained of receiving a burdensome RFE on every applicant for the past six months. Some of the requested evidence that one attorney felt may be overreaching are church membership roster listings, proof of religious education while some churches do not require formal religious education, and proving that the worker was a salaried employee for the two years prior to the application since the BCIS does not accept evidence of other types of payment, such as housing, food, etc. Also, much of the evidence that is requested is typically already included in the original petition. Attorneys plan to request the TSC Liaison to address this issue at the next liaison meeting.

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The Texas Service Center (TSC) Watchdog Report released this week detailed a current tally of the TSC's work on a growing backlog of L129f fiancé(e) visa petitions. The reports states that the rate of approvals has begun to rise after months of inactivity. The average number of approvals per business day for the last seven days was 31.8, while the average number of approvals per business day for the last 30 days was 28. The TSC receives an average of 44 petitions per business day and according to the Watchdog Report, the TSC fell behind an estimated 16 petitioners per business day or 352 petitions total for the last 30 days.

Questions were raised over the activity on Thursday, June 26, when the TSC approved 63 petitions, including 23 from November and 4 from April. The group expressed concern over what took place for the April petitions to move to the front of the long list of those who are awaiting approval.

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Two students from Georgetown's Center for Applied Legal Studies won asylum for a Honduran victim of child abuse. On May 21, an immigration judge issued a decision in which he concluded that the now 18-year old young man established that he had suffered past persecution through child abuse by his parents as a member of the social group of his immediate siblings, whose abuse the government of Honduras was unable or unwilling to control. The judge determined that he was therefore entitled to the presumption that he would suffer future persecution, a presumption that the government failed to rebut.

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The Arab-American Anti-Discrimination Committee (ADC) is compiling incidents of U.S. visa denials. According to the ADC, the U.S. Department of State is interested in investigating incidents where an individual's visa was denied without a reason given. Please send any information you may have related to any such incidents to the ADC Legal Department at [legal@adc.org](mailto:legal@adc.org).

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The American Immigration Lawyers Association (AILA) would like to question the Department of Homeland Security (DHS) about reports of individuals with pending adjustment of status applications who are being put in removal proceedings. Apparently, the reports began during the call-in special registration, then after a quiet period, have begun again. In order to address the DHS, AILA needs specific examples. So, if you have a client who was issued an NTA while an adjustment of status application was pending, please send an email with a brief outline of the facts (including the name, A #s, and office issuing the NTA, as well as whether there is any accusation of criminal activity) to: [reports@aila.org](mailto:reports@aila.org).

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The Manhattan district attorney's office announced this week that four women have been arrested and two others named on felony charges related to some highly unusual numbers discovered by the city clerk's office. Prosecutors called the women "career brides" – offering to marry undocumented immigrants for money, thus entitling the men to green cards. One woman applied for 27 marriage licenses between the years 1984 and 2002, and as many as a dozen other names were considered "suspicious" by the city clerk's office.

In a news conference, Manhattan District Attorney Robert Morgenthau said, "this opens the door to a lot of other fraud and expense for the U.S. taxpayer."

According to the clerk's office, only one time did any of the accused women properly complete a requisite affidavit about previous marriages when filing their applications.

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Immigration advocates recently interviewed by the Los Angeles Times say new security measures adopted after the Sept. 11 terrorist attacks are choking the U.S. refugee program, which "once set an example for the world." Thousands of refugee families are harmed by these new restrictions, creating a "humanitarian quandary."

Anastasia Brown, director of refugee programs for the U.S. Conference of Catholic Bishops, says some have been doubly victimized, and that she is haunted by the knowledge that a 9-year-old Somali girl waiting to come to the United States was raped, suffering severe bladder damage.

The Times' Ricardo Alonso-Zaldivar writes, "If the program isn't dead, it's badly damaged," attributing the quote to Leonard Glickman, president of the New York-based Hebrew Immigrant Aid Society.

President Bush has pledged to continue the goal of welcoming 70,000 refugees this year, but with only three months left in the fiscal year, fewer than 17,400 have been admitted.

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Rusty Childress, a Phoenix businessman, and Arizona activist Kathy McKee filed a ballot initiative Monday with the Arizona Secretary of State aimed at banning the state from spending tax money on undocumented immigrants. According to a report in The Arizona Republic, "Protect Arizona Now" would require a government background check into the legal status of anyone seeking public assistance or social services, and undocumented immigrants found would be turned over to federal authorities. The initiative would exempt certain federally-mandated services, such as public education. Governor Janet Napolitano vetoed a bill that held the same requirements, leaving the architects of the initiative to take the legislation directly to state residents.

"It's a scare tactic," said Phoenix Democrat Sen. Linda Aguirre, agreeing with opponents of the initiative who believe the measure is playing on people's fears.

McKee and Childress accused state and local governments of turning a blind eye to illegal immigration.

"These traitorous bureaucrats thumb their noses at their legal constituents and blatantly violate laws," Childress said.

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ABC News anchor Peter Jennings, a Toronto-born Canadian, became an American citizen this week. Jennings, 64, has worked in the US since 1964 and has anchored ABC's nightly news for 20 years.

"As a Canadian friend said to me today, I've always made clear my love for America. And it was a good time to formally declare that affection, along with a sense of debt and gratitude to the country that's made it possible for me to have a wonderful life both professionally and personally," he said.

Mr. Jennings cited the Sept. 11 terrorist attacks on the US as a reason for becoming a US citizen.

"I think that 9-11 and the subsequent travel I did in the country afterwards made me feel connected in new ways. And when we were working on the America project, I spent a lot of time on the road, which meant away from my editor's desk, and I just got much more connected to the Founding Fathers' dreams and ideas for the future."

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Police captured one of the "Top 10 Most Wanted Fugitive Criminal Aliens" this week. Officials said they spotted Datinder Singh Munder last Sunday, sitting under a tree in Santa Clara. Munder, 37, is a native of India convicted in 1995 on two counts of assault with a firearm and was ordered deported after serving time in prison. The top 10 fugitive list was created by the Bureau of Immigration and Customs Enforcement in May.

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A federal grand jury in Rochester has indicted an immigration consultant allegedly linked to a fraudulent agency accused of having bilked \$3 million from immigrants seeking green cards and other documents. Liang Min Chen, also known as Gui Zhong Chen, is being held without bail, on charges that he conspired to bribe an undercover federal agent to obtain illegal immigration documents for his clients.

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The General Accounting Office release its report on Social Security Numbers this week, a study titled "Ensuring the Integrity of the SSN." The GAO found that the Social Security Administration's task force to address security weaknesses in the governmental and commercial use of SSNs has had limited success with its programs, including a service to states to verify SSNs of driver license applicants. Fewer than half the states have used the service, and those who do have used it unevenly. The SSA now requires all field staff to verify the identity and immigration status of all non-citizen SSN applicants, but some vulnerabilities remain, such as the SSA's process of assigning numbers to children under the age of one and in the issuing of replacement Social Security cards. According to the report, non-citizens "represent the bulk of new SSNs issued by SSA's 1,333 field offices."

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Fox News published an opinion piece by an anti-immigrant lawyer this week that accused Jeanne Butterfield, the Executive Director of the American Immigration Lawyers Association of having once headed various Palestinian groups with links to terrorist and Marxist organizations. AILA issued a response advising its 8000 members that while Ms. Butterfield had headed up the groups mentioned in the article, the groups' activities related to promoting Israel-Palestinian peace initiatives as well as Palestinian human rights.

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## 8. International Roundup

The United Nations refugee agency stated this week that Iraq will be unable to cope with a mass return of refugees until next year and governments should not force large groups to go back. Denis McNamara, UNHCR special envoy to Iraq, said that the agency would assist some of the 200,000 refugees in Iran and would help a small number of young military deserters return from a camp in Saudi Arabia.

Poor security, the lack of basic services and a civil administration would prevent all but a few small-scale, voluntary and orderly repatriations this year, said Denis McNamara, UNHCR special envoy to Iraq. In the process the UN will lay the groundwork, and a larger scale return in 2004 will be expected.

UNHCR estimates that around four million Iraqis fled their country during Saddam Hussein's rule. Around 500,000 are classified as refugees or asylum seekers.

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The Swiss government is facing calls to grant temporary residence until next April for refugees from Afghanistan. Switzerland has rejected asylum request for over 100 Afghan citizens, but their repatriation is pending. The Society for Threatened Peoples said it was unreasonable to send back people to Afghanistan because of the problems the country is facing, such as poor security and drought.

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Malaysia deported nearly 1,400 illegal Indonesian immigrants last week. The first 599 deportees left Malaysia by ferry and were taken to Surabaya. Another 790 Indonesians were deported by Friday.

The police arrested the immigrants last year in Kuala Lumpur, Malaysia's largest city. Many served prison terms for entering illegally the country. While migrant workers from neighboring Indonesia are the backbone of the construction sector in Malaysia, many of them are illegal immigrants. Authorities expelled over 300,000 illegal immigrants last year, mostly Indonesians and Filipinos.

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Two European journalists and an American pastor arrived in Bangkok last Wednesday after serving less than two weeks of a 15-year prison sentence in Laos. The three men were charged with possessing a gun and explosives, and obstructing a police officer.

They were released on humanitarian grounds, with the government trying to ease relations with France, Belgium and the United States. Pressure from Western governments and human rights groups may have hastened the release.

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## 9. Legislative Update

The following bills were recently introduced in Congress:

- HR 2630, sponsored by Rep Sheila Jackson Lee [TX-18] (introduced 6/26/2003), to prevent commercial alien smuggling, and for other purposes.

[http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108\\_cong\\_bills&docid=f:h2630ih.txt.pdf](http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:h2630ih.txt.pdf)

- HR 2671, sponsored by Rep Charlie Norwood, Charlie [GA-9] (introduced 7/9/2003), to provide for enhanced Federal, State, and local enforcement of the immigration laws of the United States.

[http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108\\_cong\\_bills&docid=f:h2671ih.txt.pdf](http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:h2671ih.txt.pdf)

- HR 2688, sponsored by Rep Thomas Tancredo [CO-6] (introduced 7/9/2003), to amend the Immigration and Nationality Act to repeal authorities relating to H1-B visas for temporary workers.

[http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108\\_cong\\_bills&docid=f:h2688ih.txt.pdf](http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:h2688ih.txt.pdf)

- HR 2702, sponsored by Rep Rosa DeLauro [CT-3] (introduced 7/10/2003), to amend the Immigration and Nationality Act with respect to the admission of L-1 intra-company transferree nonimmigrants.

[http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108\\_cong\\_bills&docid=f:h2702ih.txt.pdf](http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:h2702ih.txt.pdf)

- S 1353, sponsored by Sen Sam Brownback [KS] (introduced 6/26/2003), a bill to establish new special immigrant categories.

[http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108\\_cong\\_bills&docid=f:s1353is.txt.pdf](http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:s1353is.txt.pdf)

- S 1362, sponsored by Sen Barbara Boxer [CA] (introduced 6/26/2003), a bill to authorize the Port Passenger Accelerated Service System (Port PASS) as a permanent program for land border inspection under the Immigration and Nationality Act, and for other purposes.

[http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108\\_cong\\_bills&docid=f:s1362is.txt.pdf](http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:s1362is.txt.pdf)

- S 1387, sponsored by Sen John Cornyn [TX] (introduced 7/10/2003), a bill to amend the Immigration and Nationality Act to authorize the establishment of guest worker programs, to provide for the adjustment of status of certain aliens unlawfully present in the United States to the status of a non-immigrant guest worker, and for other purposes.

[http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108\\_cong\\_bills&docid=f:s1387is.txt.pdf](http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:s1387is.txt.pdf)

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To see what immigration-related legislation is pending in Congress, visit our legislative chart at [www.visalaw.com/advocacy.html](http://www.visalaw.com/advocacy.html).

Over 375 Border Patrol agents have been assigned to various strategic locations along the northern border, which brings the total number of agents assigned along the U.S. border with Canada to 1,000. In addition to the extra agents, additional aircraft will provide air coverage across the northern border.

"Homeland security is our top priority," said U.S. Customs and Border Protection (CBP) Commissioner Robert Bonner. "Customs and Border Protection has the front line responsibility for detecting terrorists and terrorists' weapons including weapons of mass destruction at our nation's borders. The Border Patrol is an essential part of Customs and Border Protection and provides security against intrusions between our nation's officials crossing points.

"Given the terrorist threat, we were clearly understaffed on the northern border. This is an important step in increasing security along our northern border and is necessary given the continuing threat of terrorism," Bonner added.

These permanent positions were funded through the 2003 fiscal year budget passed by Congress. In May 2002, 245 Border Patrol agents were selected as part of the northern border fiscal year 2002 enhancements and the wartime supplemental appropriation. By the end of this year, approximately 1,000 Border Patrol agents will be permanently assigned to the northern border.

The Border Patrol was transferred from the former INS and became a division of Customs and Border Protection on March 1, 2003. Customs and Border Protection is a new agency within the Department of Homeland Security's Border and Transportation Security Directorate. In addition to the Border Patrol, CBP unifies all of the Inspectors (Customs, Immigration and Agriculture) at the ports of entry of the United States, including all of the ports of entry. Currently, CBP has over 2,500 inspectors assigned to the northern border crossing points.

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#### 11. State Department Imposes New Requirements On Those Entering Under Visa Waiver Program

Beginning October 1, 2003, all Visa Waiver Program (VWP) nationals must obtain either a Machine Readable Passport (MRP) or a U.S. non-immigrant visa (NIV) in order to enter the U.S.

This change is an advancement of Section 217 of the INA from October 1, 2007 to October 1, 2003 and applies only to VWP travelers. The change does not apply to Transit Without Visa (TWV) purposes.

Currently, 27 countries participate in the VWP program: Andorra, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom.

Citizens of VWP countries may replace their non-MRPs with MRPs may find it more beneficial than obtaining a new visa as the passport cost is less than the \$100 NIV fee. In some areas however, many expats may not have the option of obtaining

MRPs and therefore, posts may experience an increase in NIV applications from VWP citizens in the upcoming months.

The State Department has the authority, under the Patriot Act, to grant a waiver of this requirement to VWP travelers from countries that are making progress toward providing MRPs. The State Department, however, intends not to exercise this option.

Families and groups should obtain individual MRPs since each MRP contains only biodata for that individual traveler.

Critics of the new regulation contend that tourism to the US will be adversely affected since nationals of many visa waiver countries lack the required passports.

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## 12. BCIS Implements New Pilot Program for Prospective Adoptive Parents

The Bureau of Citizenship and Immigration Services (BCIS) recently developed a new pilot program that allows prospective adoptive parents (PAPs) to determine a child's status as an orphan under the Immigration and Nationality Act prior to adoption or obtaining legal custody of the child.

Currently, the pilot program involves only children from Haiti, Honduras, Philippines, Poland, and Sierra Leone. Countries may be added or removed from this list at future dates.

The program is designed to prevent situations where a PAP completes the adoption process in a foreign country, but is unable to return to the United States with the child because the child does not meet the Act's definition of orphan.

United States immigration law allows a child to immigrate to the United States only when the child fits the Act's definition of orphan. Under the law, an orphan is defined as a foreign child who does not have either parent because of death or disappearance, abandonment, desertion, or separation.

The processing procedure involves several steps:

1. Submit Form I-600A to the BCIS
2. After the I-600A is approved, the BCIS will send a letter explaining the new pilot program along with the approval notice.
3. If the PAP chooses to participate, he or she must do so at the time the Form I-600 is filed, either in a field office in the United States or at a United States Embassy or consulate abroad, *and before adoption or a legal custody arrangement has occurred*. The I-600 must be accompanied with all required supporting information.
4. When the BCIS receives the I-600, they will adjudicate it for prima facie eligibility.
5. If the I-600's supporting documents establish that the child does meet the Act's definition of an orphan, then the officer will prepare a Form I-604 and forward it and all supporting documents to the National Visa Center (NVC).
6. The NVC will forward the Form I-604 and documents to the overseas BCIS or State Department office having jurisdiction over the Form I-604.

7. The overseas office then investigates the Form I-604 and makes a determination that the child either is or is not classified as an orphan.
  - a. If the child is determined to be an orphan, the overseas office will then return the I-604 to the domestic field office.
    - i. The field office will issue a request for evidence to the PAP, and instruct the PAP to finalize the adoption or legal custody arrangement and forward all documentation of this action.
    - ii. After forwarding a final adoption decree, the Form I-600 will be adjudicated.
  - b. If the overseas office determines that the child is not an orphan, they will return the Form I-604 to the domestic office, which will prepare a Notice of Intent to Deny. This notice informs the PAP that the child is not eligible for immigration as an orphan.
    - i. If new evidence arises subsequent to the overseas office's investigation that could support an assertion that the child could be eligible for immigration as an orphan, then the PAP could file a cover letter and a Form I-72 Request for Further Evidence.

For more information about this pilot program, you may visit [www.immigration.gov/graphics/services/index2.htm](http://www.immigration.gov/graphics/services/index2.htm)

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### 13. New Rule Requires Most Visa Applicants to be Interviewed at US Consulates

Due to heightened security concerns related to September 11, the Department of State (DOS) has been reviewing and changing its visa application and issuance practices. As part of these changes, the DOS has begun interviewing more visa applicants than they did prior to September 11. Consequently, the DOS has made the procedure of fewer interview exemptions into a regulation.

The Immigration and Nationality Act (INA) requires that all immigrant visa applicants appear before a consular officer in person. However, previously, nonimmigrant visa applicants could receive a 'personal appearance waiver' (PAW).

The new regulation, effective August 1, 2003, significantly reduces the number and kind of situations in which certain visa applicants who previously have had their requirement to appear in person before a consular officer when applying for a nonimmigrant visa waived.

Consular officers will not have broad discretion to grant PAWs to applicants for B, C-1, H-1, I, J and crew visas. Officers will still have the authority to grant PAWs for diplomats and officials of international organizations. Also, the regulation gives the DOS the authority to make a number of interview waiver decisions previously made at consular posts. The Deputy Assistant Secretary of State for Visa Services will have the authority to grant a PAW if he or she finds that the waiver is in the national interest or involves unusual circumstances.

Under the new regulation, a consular officer may grant a PAW to certain categories of nonimmigrant applicants. These include: children age sixteen and younger and adults age sixty or older; applicants for A, C-2, C-3, G or NATO visas; those applicants who seek to obtain re-issuance of a nonimmigrant visa, who are within

twelve months of the expiration of their previous visa and for whom the consular officer does not find any indication of noncompliance with U.S. immigration laws; and aliens for whom a waiver is necessary for national interest or because of unusual circumstances.

The State Department is warning applicants to expect long delays at many consulates around the world.

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#### 14. ESIG Comments On BCIS E-Filing Initiative

The E-Filing Standards for Immigration Group (ESIG), a voluntary consortium of established U.S. immigration law firms and their electronic immigration software and online applications solution-providers, has submitted comments to the Bureau of Citizenship and Immigration Services regarding its new e-filing initiative. Greg Siskind of Siskind Susser was one of the signers of the comments. The full text of the ESIG comment can be found at <http://www.visalaw.com/03jul1/ESIG.pdf>

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#### 15. Nazi Persecutor Arrested By Immigration Authorities

The US Department of Homeland Security's Bureau of Immigration and Customs Enforcement has announced the arrest of Johann Leprich, an accused World War II Nazi concentration camp guard. Leprich was arrested in Clinton Township, Michigan. Leprich is the latest in a long string of cases of Nazis stripped of their citizenship and deported. Since 1979, 71 Nazi persecutors have been stripped of U.S. citizenship and 57 have been removed from the United States.

Leprich immigrated to the US in 1952 and naturalized in 1958. Efforts to deport Leprich began in the 1980s. In 1987, a US District Court revoked his citizenship finding that he had worked as a SS Death's Head guard at Mauthausen Concentration Camp in Austria from 1943 to 1944. The court found that Mauthausen inmates were used as slave laborers in a quarry at the camp and many inmates were starved, tortured, beaten and murdered by methods such as gassing, hanging, electrocution, burning, starving and shooting.

Leprich's lawyers claimed he left the US after the decision. In 1997, reports surfaced that Leprich had been living in Canada. BICE authorities later established that Leprich had turned up again in Michigan.

Leprich is being deported on grounds of participating in Nazi atrocities as well as for not reporting his address to the Bureau of Citizenship and Immigration Services.

"People who took part in these horrific crimes against humanity should know that we will never stop looking for them. There is no statute of limitations on evil," stated BICE's Acting Assistant Secretary Michael J. Garcia, "our agents remain committed to ridding our communities of criminals who have no right to remain in this country."

"This arrest makes clear that those who participated in the atrocities of the Holocaust will not escape the determined reach of U.S. law enforcement, regardless of how

much time has passed," said Attorney General Ashcroft. "Nazi collaborators will not find a safe haven in the United States."

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## 16. New W Visa Category For Guest Workers Proposed In Senate

Texas Republican Senator John Cornyn has introduced a major piece of legislation that would create a new guest worker visa category. The bill, called the "Border Security and Immigration Reform Act of 2003" would create a new W visa category that would be similar, but much more expansive than the H-2B temporary worker category.

### **What does a country need to do for its citizens to participate in the guest worker program in the US?**

The Cornyn bill would only be available to nationals of countries that sign on to participate in the guest worker program and meet various conditions. Foreign countries interested in participating must

1. develop standards of eligibility for enrollment in the program of workers who are natives of that country;
2. establish a process for the enrollment in the program of eligible workers;
3. establish, in cooperation with US employers, a training program in the country for such workers;
4. establish procedures for providing health care;
5. monitor and share information with the US regarding the coming and going from the country of the participating country enrolled workers in the program;
6. accept the return of the workers from the US.

### **What are the basic requirements for a guest worker to participate in the program?**

The guest worker program will have four basic elements:

1. job opportunities for qualified workers in the US will be found in cooperation with the participating country
2. the guest workers will be admitted to the US to fill those jobs
3. the work will be performed either on a seasonal or non-seasonal basis
4. the guest worker must return to the guest worker country before the expiration of the worker's period of authorized stay in the US.

### **Which immigrant workers are barred from participating in the guest worker program?**

Certain aliens will not be allowed to participate in the program. They include children under 18 (unless they are accompanying another adult guest worker), aliens with felony convictions or more than three misdemeanors, or any alien unlawfully present in the US. However, people unlawfully present can participate if they apply for admission in the guest worker program not later than one year after the date of enactment of this new legislation.

### **What are "seasonal workers"?**

Seasonal workers are those coming to the US to work for no more than 270 days in a calendar year. Seasonal workers are permitted to apply for re-admission to the US every year without a limit on the number of years worked.

### **What are " non-seasonal workers"?**

Non-seasonal workers are those in the US for periods not to exceed twelve months. Extensions of twelve months are permitted for a total of thirty-six months. If the worker returns to his or her home country for six months or more, the worker is entitled to another thirty-six months on a W visa.

### **What type of documentation will workers be provided to prove they can work?**

Workers on W visas will be granted employment authorization documents with a photograph proving their identity.

### **Can W visa workers travel freely?**

Yes. However, the entries and exits of W visa workers will be monitored and tracked to make sure that workers are complying (including checking to make sure workers are working for the authorized employer).

### **Is this program an amnesty?**

Well, yes. Workers participating in the program "shall be absolved of all liability for illegal behavior, as such behavior pertains to the immigration status of the alien that occurred before the alien's participation in the guest worker program."

### **Can W visa workers qualify for green cards?**

Yes. For the first time, the US government would have a point system to determine the priority in granting permanent residency. Applicants who have worked continuously for three years under the program will be given a priority. Note that workers can only apply for a green card when the applicant has returned to the worker's home country. Employers will no doubt be unhappy about this since it will obviously disrupt the employment relationship.

The point system will be based on the following factors:

- whether the worker has an employer sponsor
- whether the worker received promotions or pay increases during the worker's employment periods
- whether the worker paid taxes

- the proficiency of the alien in speaking English
- the education of the worker
- whether the worker has refrained from illegal activity

### **What kinds of businesses can be "employers" under the proposed law?**

Any individual or employer can potentially be an employer.

### **What types of jobs can qualify as a legitimate "job opportunity"?**

The bill states that a "job opening for temporary full-time employment" at a place in the US to which US workers can be filled. The term "temporary" is a bit worrisome since this is a major problem for H-2B employers who have no problem showing that they cannot find American workers but cannot show the job is of a temporary nature.

Employers are also required to first file an attestation describing the nature and location of the work, the anticipated period for which the worker will be needed, the wages to be paid and the method of transportation, if needed.

The US Labor Department is also required to attest that there are not sufficient workers able, willing and qualified and available immediately to perform the job in the employer's petition. Also, the employer must attest that the wages and working conditions won't adversely affect the wages and working conditions of workers in the US. The process is basically the same as the labor certification process used in H-2B and permanent residency cases. One difference is that the employer needs to pay either the hourly wage rate listed under the Fair Labor Standards Act or the applicable minimum wage. There is no reference to a prevailing wage.

Like the H-2B visa, associations can file on behalf of one or more employer members.

### **How long will it take to get a certification from the Labor Department?**

The good news for employers and workers is that the Labor Department is only supposed to review applications for completeness and obvious inaccuracies. Once the Labor Department makes this determination, they must certify the position. And the certification must be issued within 14 days.

No less than a week before the employment is supposed to begin, the Labor Department must issue a report to the employer listing the name, contact information and specific work permit information of each guest worker who has been authorized to perform the work sought by the employer. The employer then will present the worker with a contract stating that the worker agrees to comply with all US laws and the employer will permit access to the workplace by the Department of Labor.

### **What happens is an employer violates the program's rules?**

An employer faces a ten year debarment from using the guest worker program if it violates the rules on three counts within three consecutive years. Also, workers will have the opportunity to switch employers if they file a complaint against an employer who engages in bad acts. Such employees are to be immediately reassigned and the matter will be heard by the Secretary of Homeland Security within 30 days. If the

employer is found not in violation, the employer shall be assigned a new employee within 15 days.

**Is there an amnesty for employers?**

Yes. Employers are also absolved of liability for illegal behavior relating to employing undocumented workers.

**Can spouses and kids come to the US with the principal applicant?**

Yes as long as the principal applicant makes 125% or more of the federal poverty income level.

**How many W visa holders can qualify for green cards?**

The Secretary of Homeland Security actually has the discretion to adjust the total number of people who may adjust status to permanent residency each year under the program. Economic conditions and the number of people in the program will play a role in coming up with this number.

**What happens if an employer continues to illegally employ workers after the program becomes effective?**

An employer may face new penalties aside from ones currently available under the law. The DHS may impose a civil penalty of \$500 to \$2500 per unauthorized worker for the first violation and \$2000 to \$5000 for the second found violation. The number goes to \$4000 to \$10,000 for the next violation plus a five year debarment from using the guest worker program. Finally, the next violation will trigger penalties of \$10,000 per worker plus a permanent bar from the program.