

Siskind's Immigration Bulletin
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SSHD serves immigration clients throughout the world from its offices in the US,
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1. Openers

Dear Readers:

Last week I issued a commentary that was a departure from our usual format. The
Point/Counterpoint discussion with Rob Sanchez, an anti-H-1B visa advocate, was
intended to provide a lively discussion that would provoke discussion. And it certainly

has. My friends at ILW.com picked up the column, which meant that it was viewed by a much larger pool of readers. I received many letters from people - probably more than in response to any other article I've written in the last nine years for this newsletter. Most people agreed with my views. A few disagreed (interestingly, I received no letters from the anti-immigrant types as you might have expected - was I really that convincing?). What I found most interesting was how many people assumed that my opinions meant that I consider myself a right-winger. Actually, I consider myself neither on the left or the right (though some readers might be surprised to know that I'm a lifelong Democrat). My point in the story was that anyone who loves the free market system should be disturbed whenever the government seeks to impose trade barriers. And capping the H-1B visa is, like it or not, a trade barrier. Many people equate being pro-business with being right wing. That bothers me. A freer economy results in a more robust economy. That means lower unemployment. That means more money to pay to educate our children. It means more money to invest in cleaning up our environment. All priorities of the left that are achieved when an economy booms.

This is an important week for physician immigration. The US Department of Health and Human Services announced it would begin accepting applications for J-1 waiver applications for primary care physicians going to work in health care shortage areas. It is said in the world of policymaking that the perfect is the enemy of the good. And that appears to be the case with this new program. HHS has attempted to address every potential problem with its program. They may have succeeded, but the tradeoff is the creation of a program that is so restrictive and cumbersome that employers who simply don't want to bother with all of the requirements will no doubt pass it up. We hope HHS will reconsider some of the most burdensome requirements. We provide an overview of how the program works.

Last week I noted that I was appointed to chair the Physicians Committee of the American Immigration Lawyers Association and that I am the new technology columnist for AILA's magazine Immigration Law Today. This week, I'm happy to turn the spotlight over to my law partner Lynn Susser. Lynn has been elected as the chair of the five-state Midsouth Chapter of the American Immigration Lawyers Association. She also assumes a spot on the board of governors for AILA. Lynn will no doubt do a bang up job. Way to go Lynn!

Speaking of AILA, next week is the annual meeting of the American Immigration Lawyers Association. You know you've been a member of AILA for a while when you start to repeat cities for the annual meeting. My first AILA annual meeting was in 1991 in New Orleans. That's where I'll be next week as well for the yearly gathering. When I attended that first AILA meeting, I had just started practicing immigration law and felt utterly lost. I was a 22-year-old lawyer practicing for only a year and trying to teach myself immigration in a city where you could count the number of immigration lawyers on one hand. That AILA meeting provided an intensive education to a novice lawyer and gave me the confidence to stick with it. Some of the friends I made at that meeting are still good friends. I've made every AILA annual meeting in the years since and still find the meeting very worthwhile. For those of you attending, feel free to stop by for my program Wednesday night on immigration case management systems.

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

2. The ABC's Of Immigration – HHS Launches Physician Waiver Program

The US Department of Health and Human Services will publish a long-awaited notice in Thursday's Federal Register announcing the start of its new waiver program for physicians on J-1 visas seeking a waiver of their two year home residency requirement. On December 19, 2002, HHS released an interim final rule amending its prior program of sponsoring physicians involved in research to also include physicians willing to provide primary care to patients in health care shortage areas.

The program will be nationwide and there are no limits on the number of waivers HHS may choose to support.

HHS held off on accepting applications under the new program until actual guidelines were written and an application form was approved by the Office of Management and Budget. That process is now complete.

The HHS program will, with notable exceptions outlined below, operate in a manner similar to the now defunct US Department of Agriculture program as well as the new Delta Regional Authority Waiver program. However, there are some restrictions in the program that will limit the pool of eligible physicians more than many would like. Some of the restrictions were included in the earlier interim regulation. Others are new.

HHS indicates that it will consider information from and coordinate with State Departments of Public Health (or the equivalent), other interested government agency sponsors, HHS programs such as the National Health Service Corps and other relevant government agencies. The announcement does not, however, elaborate on what type of coordination will be maintained. Siskind Susser has learned, however, that HHS does intend to create a database that will make it possible for all agency sponsors to determine the J-1 physician population in a particular community regardless of program sponsor.

We reported earlier this year that HHS was considering making applicants initially apply for a waiver through a State 30 waiver program first and would consider applications once a program was filled. That idea has been dropped and is not included in the new program.

The new program also dropped a requirement from the interim rule that a physician possess a state license. That provision was criticized because several states do not issue licenses until a physician has a visa thus creating a "chicken and egg" problem for a doctor since a waiver is required to get a visa.

To qualify for a waiver, an applicant must meet the following requirements:

1. The applicant must be a primary care physician or general psychiatrist who has completed his or her primary care or psychiatric residency training program. Primary care is defined to include general internal medicine, pediatrics, family practice, obstetrics/gynecology or general psychiatry. The requirement that residency training must actually be completed will surely be criticized since it will mean that physicians will be delayed in starting their new jobs and may even fall out of legal status during the long wait for a waiver.

Residency training must have been completed no more than 12 months before the date of the start of employment under the employment contract. An exception will be made for applications received prior to October 1, 2003. For those cases, HHS will allow applicants to apply who completed their programs after May 2002. This requirement will effectively preclude many applicants who have been on O-1 visas who have left the US and may be practicing in another country.

2. The petitioning facility must show that it has actively recruited a qualified US physician in the recent past and has been unsuccessful. The employer will need to provide the names of non-foreign physicians who applied and/or interviewed for the job and the reasons why they were not hired.

3. The head of the petitioning facility must sign a statement confirming that the facility is located in a designated Health Professional Shortage Area or Medically Underserved Area/Population (Mental Health Professional Shortage Areas are not mentioned but presumably were meant to be included for psychiatrists). Also, the statement should state that the facility provides medical care to Medicaid and Medicare eligible patients and the uninsured indigent. Note that the checklist being provided by HHS indicates that employers must also accept S-CHIP assignment and use a sliding fee scale.

4. The physician must sign a statement indicating that no other interested government agency waiver request is pending and will not be submitted while an HHS waiver request is pending.

5. The employment contract must meet the following requirements:

a. the doctor will practice in primary care or general psychiatry for a minimum of three years

b. the doctor must work for 40 hours per week in a specified shortage area.

c. there is no non-compete clause that would limit a doctor's ability to continue to practice in the designated community after the three year obligation period runs.

d. the contract may only be terminated for cause and not by mutual agreement until the three year commitment is done. However, HHS may consent to a transfer.

6. HHS is requiring that applicants have their credentials verified through HHS's Federal Credentialing Program (FCP). The FCP is a partnership between the Health Resources and Services Administration, HHS and the US Department of Veterans Affairs. A waiver application will not be submitted until this process is complete. The application form is relatively simple to complete and may be submitted by fax to speed up processing. However, HHS is warning applicants that the credentialing process takes about 120 days to complete. A built in four month delay in the process

will no doubt cause hardships to many physicians particularly if the waiver application cannot be submitted until after one's residency training program is completed. Many physicians will likely fall out of legal status while waiting for their waivers to clear and they risk being deported during that time.

7. Employers must include a prevailing wage form with their application. This is information normally provided to the US Department of Labor as part of the H-1B visa application that happens later in the process. There is no official prevailing wage form provided to the Labor Department and it is not clear what HHS will consider acceptable.

8. As was the case with the USDA program, a State health department will need to support the application and indicate so in a support/acknowledgement letter.

9. Employers must sign a notarized statement that "that employer and staff were not acquainted with the J-1 physician prior to his/her application." The requirement will no doubt be controversial and some might question what difference such a requirement would make if a facility is in a severe physician shortage area and an employer can document that they have attempted to recruit in good faith. An employer arguably would want to recruit people that they know in order to find a candidate with built-in ties to a community and who is likely to stay once the three-year commitment is completed.

HHS will require doctors to provide three letters of recommendation from current US residents who know the J-1 physician's qualifications.

Finally, a facility must be in existence and an employer will be required to submit proof of this such as a phone book listing.

Applications will be processed in the order they are received. Also, applications must be submitted by the employer and not the physician.

HHS has already posted the program's application form on its web site at <http://www.globalhealth.gov/exchangevisitor.shtml>. The site contains a document checklist that includes additional items similar to other interested government agency waiver programs.

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 - Can I work for the company, who has filed my H-1 application, when the approval from INS is still pending?

A - Under H-1B portability rules, you can start work for a new employer upon filing an application for a change of status and need not wait for an approval. We usually

recommend waiting for a receipt before transferring just to be sure you have proof of filing. Also, there is a risk if the change application is denied and you have already left the first employer.

Q - A green card was issued to me at the age of 4 and I left USA at the age of 8 and a 1/2. My age right now is 28. As I was not an adult, I couldn't take care of my green card. What will be its status now?

A - You will no doubt be considered to have abandoned your status. The fact that you were a child when you left won't matter. So you are likely to have to start over.

Q - Hello Mr. Siskind. My former company A paid additional fee \$1000 on the H-1B extension before. My current company B paid \$1000 again on the new H-1B filing. Is my current company B required to pay the additional fee \$1000 once again when filing the 7th year H extension? Please see the instruction of Form I-129W Part B at <http://www.immigration.gov/graphics/formsfee/forms/files/i-129w.pdf>

I don't know whether the petitioners on the first and second H-1B extension must be identical if seeking exemption from the fee \$1000, and how many times on earth the additional fee \$1000 must be paid during one's whole H period. Thank you for the clarification.

A - The \$1000 needs to be paid up to two times per petitioner. So if you switch jobs, your new employer does not get the benefit of the previous employer's having paid money previously.

Q - Am I allowed to travel outside of the U.S. while an H1-B transfer is in process? My current H1 Visa expires Jan 2005 in my passport, but I will end my employment with my current company in June 2003.

A - Unless you have a valid I-797 approval notice for the employer for whom you are working when you seek to reenter the US, you cannot reenter. You need to wait until the change of status is approved if you expect to reenter. So even though H-1B portability makes it possible for you to switch employers quickly after you file for a change of status, you still need to get the change application approved before you travel. That's why premium processing is often used in these kinds of cases.

4. Border News

A leading Cuban pop star, Carlos Manuel, defected after crossing a bridge spanning the Mexico-United States border last weekend. He was granted asylum in South Texas. Manuel, 30, brought five members of his entourage, including, his mother, his sister, his sister's boyfriend, his cousin, who is a percussionist in his band, and a

sound engineer. Manuel decided to defect after the Cuban government's recent crackdown on dissidents, which included the arrest of more than 70 people in March.

Under the Cuban Adjustment Act, a Cuban citizen who reaches the United States is allowed to stay after being interviewed and inspected. A year and a day after entering the United States, that person is allowed to become a permanent resident.

A Border Patrol agent who shot and killed a 19-year-old undocumented immigrant earlier this year in El Paso will not be prosecuted by the state. A grand jury looking into the shooting death did not return an indictment against Agent Vernon Billings. The Mexican Consulate in El Paso has asked the U.S Justice Department to look into the case. El Paso Border Patrol spokesman Dough Mosier said he anticipates a lawsuit.

Juan Patricio Peraza Quijada was living at a temporary shelter for undocumented workers in downtown El Paso when several Border Patrol agents approached him. After running, he struck one official with a ladder and threatened others with a metal pipe. He was then shot once in the arm and once in the abdomen.

A federal jury in Washington convicted a couple of bringing a Ghanaian woman into the United States illegally and forcing her to work as a domestic servant and nanny seven days a week without pay. The verdicts are believed to be the first convictions under laws Congress passed in 2000 to combat trafficking immigrants for the purpose of exploiting them as workers.

After deliberating a little more than a day following a three-week trial, the jury in the U.S. District Court convicted Barbara Coleman-Blackwell, 33, of forced labor, conspiracy, harboring an illegal alien for financial gain and hiding her victim's passport and visa. The jury also convicted her husband, Kenneth, of conspiracy and harboring an illegal alien for financial gain. Both were acquitted of charges of encouraging the victim, Margaret Owusuwaah, a relative of the couple, of coming to the United States in violation of federal immigration laws.

An 18-year-old Haitian who became the center of a letter-writing campaign by Amnesty International has been released from a West Miami-Dade County detention center nearly five months after an immigration judge granted him asylum. Ernesto Joseph, who arrived in South Florida on Oct. 29 as part of a boatload of more than 200 Haitian asylum-seekers, was paroled Wednesday. Immigration officials cited humanitarian grounds as the reason for his parole.

Joseph's lawyers, as well as Amnesty International, claimed that the young asylum-seeker was suffering "irreparable harm" from the trauma of his time in the detention facility. His case is presently being appealed to the Board of Immigration Appeals, who will have the final say on whether or not Joseph is allowed to remain in the United States.

The United States has deployed teams of specially trained dogs to the Canadian border to sniff out any deadly chemical weapons being smuggled into the United States by terrorists. The dogs can detect sarin gas, nerve gas, and cyanide that could be smuggled into the United States in containers.

The chemical detector dogs, known as "chem dogs," which also patrol airports and seaports, are among 1,200 canines used by the Department of Homeland Security for a variety of border work, including searching for drugs, illegal aliens, currency and food products.

An Immigration Judge in California ordered the deportation of a former Military Judge in the regime of former Somali dictator Mohamed Siad Barre. The deportation of Abdi Ali Nur Mohamed is believed to be the first case involving the termination of immigration status for an alleged Somali war criminal based on atrocities committed in the past. Immigration and Customs Enforcement (ICE) allege that Mohamed assisted in the execution of innocent civilians in and near the city of Hargeisa, Somalia. Mohamed is currently in ICE custody.

The Bureau of Immigration and Customs Enforcement (ICE), in cooperation with the Nigerian government, this week successfully repatriated 89 Nigerian nationals who were illegally present in the United States. Chartered aircraft flew the Nigerians, who had exhausted their legal avenues of appeal, from the United States to Lagos, Nigeria.

5. News From The Courts

Christopher Pickering, a native and citizen of Canada, was convicted in Canada in 1980 for unlawful possession of a restricted drug, Lysergic Acid Diethylamide (LSD), in violation of Section 41(1) of the Food and Drugs Act. Despite getting a Canadian court to quash his conviction, the Board of Immigration Appeals (BIA) determined that by quashing the conviction for the sole purpose of avoiding the bar to permanent residence in the United States, the court's action was not effective to eliminate the conviction for immigration purposes. The BIA dismissed Pickering's appeal.

In March 1993, Pickering filed an application for adjustment of status. However, he subsequently requested that a Canadian court quash the conviction because the controlled substance conviction would render him ineligible for adjustment. In June 1997, the court quashed Pickering's 1980 conviction for unlawful possession of LSD. On August 21, 1998, the respondent's application for adjustment of status was denied and removal proceedings were initiated. The Immigration Judge found that he was removable on the basis of the conviction and ordered him removed. The judge declined to give effect to the Canadian court's order quashing the conviction finding that the court's action was for rehabilitative purposes to allow the respondent to live permanently in the United States.

The BIA reviewed several federal court opinions that addressed the issue. The BIA held that by following these opinions and applying the definition of a conviction at Section 101 (a)(48)(A) of the Immigration and Nationality Act (Act), "there is a significant distinction between conviction vacated on the basis of a procedural or substantive defect in the underlying proceedings and those vacated because of post-conviction events, such as rehabilitation or immigration hardships." Therefore, if the conviction is vacated because of error in underlying proceedings, the respondent no longer has a conviction within the meaning of Section 101 (a)(48)(A) of the Act. However, if the court vacates a conviction for reasons unrelated to the merits of the underlying criminal proceedings, the respondent remains convicted. The BIA also noted that a foreign conviction does not alter the analysis set forth with respect to the purpose of the subsequent vacation of that conviction.

According to the record of the preceding court order, the BIA found no indication that the conviction was vacated because of an error in the underlying proceedings. The judgment only referred to the respondent's request and his supporting affidavit. Neither document identifies a basis to question the integrity of the underlying criminal proceeding or conviction. The affidavit alleges that the respondent's controlled substance conviction is a bar to his permanent residence in the United States and indicates that the sole purpose for the order is to eliminate that bar. Given those factors, the BIA found that the quashing of the conviction was done solely for immigration purposes, and therefore, Pickering still had a conviction for possession within the meaning of Section 101 (a)(48)(A).

This week, the Sixth Circuit determined what constitutes sufficient notice under 8 U.S.C. § 1229(a)(a)(F)(i). The statute requires that all aliens "must immediately provide (or have provided) the Attorney General with a written record of an address and telephone number (if any) at which the alien may be contacted respecting (removal proceedings)."

The alien, Eliseo Beltran, was deported subsequent to committing two crimes of moral turpitude. Under the statute, aliens who commit two crimes involving moral turpitude are subject to automatic and immediate deportation. Beltran sought a waiver of deportability, which would allow him to remain in the United States despite the statute mandating automatic deportation. The immigration court denied the waiver. Beltran appealed to the Board of Immigration Appeals (BIA), who reversed and remanded on the grounds that the immigration court did not explain to the defendant his right to counsel.

Following the remand judgment, Beltran moved residences. He filed an EOIR-33 change of address form informing the Immigration and Naturalization Service (INS) of his new address. About one month later, Beltran moved again. This time, Beltran requested a representative from the Wayne County Neighborhood Legal Services to send a letter to the INS informing them of his new address. This notice was not filed on an EOIR-33 form. Consequently, the INS mailed Beltran's favorable BIA decision and notice of hearing on remand to his old address.

When Beltran did not appear in court for the remand hearing, the immigration court entered a deportation order in absentia pursuant to 8 U.S.C. § 1229(a). This section provides that "any alien who, after written notice... does not attend a proceeding under this section, shall be ordered removed in absentia if the Service establishes by

clear, unequivocal, and convincing evidence that the written notice was so provided..." Beltran filed a motion to re-open his case upon being detained by the INS and held for deportation. Beltran claimed that he provided sufficient notice under the statute to the INS of his change of address. The INS denied the motion.

The Sixth Circuit found that the legislature did not intend the statute to be "an overly burdensome requirement". The court held that a mere notice of a change of address in writing to the INS satisfies the statute. Here, Beltran provided notice to the INS of his change of address, and therefore, he is entitled to re-open his case. The court reversed and remanded back to the IC to decide the waiver issue.

Julio Donaldo Ponce-Leiva petitioned the court to review a final order of removal issued by the Board of Immigration Appeals (BIA). The BIA affirmed a previous decision that Ponce-Leiva was ineligible for asylum and removable. Ponce-Leiva presented two issues: first, was his right to counsel denied because the immigration judge decided to hold an asylum hearing after his attorney refused to appear; and second, did the immigration attorney's failure to appear for the hearing constitute ineffective assistance of counsel.

In a 1997 hearing, Ponce-Leiva admitted removability for violating the Immigration and Naturalization Act (INA) and stated that he would pursue asylum. A merits hearing was scheduled for July 1, 1998. Two days before the hearing, on June 29, 1998, Ponce-Leiva's attorney requested a continuance because he would be unavailable for the merits hearing and offered alternative dates. That same day, the immigration judge denied the request for a continuance.

The merits hearing was held as scheduled on July 1. Ponce-Leiva based his request for asylum on two claims. First, he came to the U.S. to find a job because he needed a job in order to support his family, and second, returning to Guatemala would make him homeless because his family could not support him. The judge decided to deny Ponce-Leiva's asylum application and denied the request for a continuance.

Ponce-Leiva appealed to the BIA arguing that both the absence of counsel and the ineffective assistance provided by counsel violated his due process rights. On September 24, 2001, the BIA dismissed the appeal, stating that Ponce-Leiva could not prove that he was prejudiced by the absence of counsel or by counsel's performance, and his right to due process was therefore not violated.

The court affirmed the decision of the BIA, stating that the immigration judge's denial of the continuance did not violate Ponce-Leiva's right to counsel and Ponce-Leiva's claim that he had ineffective assistance from counsel was not proven. The court cited Torres v. Sanchez, 68 F.3d at 231: "The mere inability to obtain counsel does not constitute a violation of due process." The court also brought forth several cases where the petitioner was unable to obtain counsel after being given the time to do so, and the immigration judge proceeded with the hearing nevertheless. Ponce-Leiva did obtain counsel, but was unable to secure counsel's presence during the hearing; this was not a violation of due process. Therefore, the petition for review was denied.

In a dissenting opinion, Judge Rendell stated that he agrees with the majority that Ponce-Leiva's claims were not procedurally barred, but disagreed with the majority's

decision that the immigration judge did not abuse his discretion by disregarding Ponce-Leiva's right to counsel at his asylum merits hearing.

6. Government Processing Times

Missouri Service Center Processing Time Report 5/31/03 Posted on AILA InfoNet at Doc. No. 03042142 (April 21, 2003)		
Form		Now Processing Cases Received On:
I-90	Application to Replace or Renew Permanent Resident Card	
I-102	Application for Replacement/Initial Nonimmigrant Arrival/Departure Record	May 26, 2003
I-129	Petition for A Nonimmigrant Worker	
I-129S	Nonimmigrant Petition Based on Blanket L Petition	
I-129F	Fiance(e)	May 1, 2003
I-130	Petition for Immediate Relative	January 1, 2001
I-130	Other	
I-131	Application for Travel Document	April 25, 2003
I-140	Immigrant Petition for Alien Worker	
I-212	Application for Permission to Reapply for Admission to the US After Deportation or Removal	May 7, 2003
I-290B	Notice of Appeal to the Administration Appeals Unit (AAU)	November 22, 2002
I-360	Petition for Widowed/Special Immigration	
I-485	Application to Register Permanent Residence or to Adjust Status	January 30, 2003
I-485	Asylee	
I-526	Immigrant Petition By Alien Entrepreneur	

I-539	Application to Extend/Change Nonimmigrant Status	March 10, 2003
I-601	Application for Waiver of Grounds of Excludability	May 7, 2003
I-687	*	
I-690	Application for Waiver of Excludability	May 5, 2003
I-698	Application to Adjust Status From Temporary to Permanent Resident	
I-730	Refugee/Asylee Relative Petition	
I-751	Petition to Remove the Conditions on Residence	
I-765	Employment Authorization (c) 8	
I-765	Employment Authorization (c) 9	
I-765	Employment Authorization Other	March 31, 2003
I-817	Application for Family Unity Benefits	March 18, 2003
I-821	Application for Temporary Protected Status	
I-824	Application for Action on an Approved Application or Petition	April 19, 2003
I-829	Petition by Entrepreneur to Remove Conditions	

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.

Vermont Service Center Processing Time Report 6/15/03		
Form		We are now processing cases with these receipt dates:

I-90	To replace lost, damaged or destroyed I-551	4/8/2002
I-102	For replacement/initial nonimmigrant arrival/departure form	4/4/2003
I-129	Petition for Nonimmigrant Worker H-1B Cap	4/17/2003
I-129	Petition for Nonimmigrant Worker H-1B Ext	4/17/2003
I-129	Petition for Nonimmigrant Worker H-2A	Current
I-129	Petition for Nonimmigrant Worker Other (H-2B, H3, O, P, Q, R)	4/23/2003
I-129	Nonimmigrant Worker L (not based on a blanket petition)	5/12/2003
I-129	Nonimmigrant Blanket L	5/12/2003
I-129F	(Fiancée)	6/9/2003
I-212, I-601, I-612	Waivers	Current
I-130	Immediate Relatives Classes	9/16/2002
I-130	Preference Classes	2/8/1999
I-131	Application for Travel Document	4/23/2003
I-140	Immigrant Petitioner for Alien Worker E11	5/8/2002
I-140	Immigrant Petitioner for Alien Worker E12	5/8/2002
I-140	Immigrant Petitioner for Alien Worker E13	10/10/2002
I-140	Immigrant Petitioner for Alien Worker E21 (National Interest Waivers: 5/18/2002)	9/3/2002
I-140	Immigrant Petitioner for Alien Worker E31, E32, EW3 (Nurses: 4/18/2003)	9/23/2002
I-360	Petition Widowed/Special Immigration	5/12/2003
I-360	VAWA	11/7/2002
I-485	Application to Register Permanent Residence or to Adjust Status	12/15/2001
I-539	Application to Extend/Change Nonimmigrant Status	5/23/2003
I-687		N/A

I-751	Petition to Remove Conditions on Residence	12/1/2001
I-765	Employment Authorization (C) (8)	5/3/2003
I-765	Employment Authorization (C) (9)	4/14/2003
I-765	Employment Authorization Other	4/9/2003
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	2/11/2002
I-914	Application for T Non-Immigrant Status	3/31/2003
N-470, N-565, N-643		1/2/2003
N-600		1/2/2003

7. News Bytes

Federal authorities plan to use stricter standards for identifying and detaining terrorist suspects. The change occurred one week after the Inspector General's report highlighted numerous errors made by officials following the Sept. 11 attacks.

Officials plan to make at least 12 structural changes that were recommended in the report. Among the 12 changes being adopted are developing clearer criteria for determining which illegal immigrants are terrorist suspects, improving lockup conditions and policies for those in custody and giving immigration officials – rather than the F.B.I. – more authority to remove a suspect from custody. Officials are still actively considering nine other recommendations and are likely to accept many of those as well.

The move to embrace the bulk of the changes appears to signal a greater acknowledgement of shortcomings in antiterrorism and detention policies than the Justice Department officials had publicly admitted.

The Bureau of Citizenship and Immigration (BCIS) recently announced that customers can call 1-800-375-5283 toll-free for automated case status assistance on Service Center filed cases. The new number replaces the toll-free numbers

previously used on receipt notices and serves as an automated replacement of the Service Center automated case status system. Even for those using the website to get case status, the BCIS recommends calling if they move while the application is pending at one of the Service Centers or if they don't hear from BCIS within the processing time projected on the receipt notice.

Five criminal aliens on the Bureau of Immigration and Customs Enforcement's (ICE) Most Wanted Criminal Aliens List have been arrested in less than a month since the Most Wanted list was unveiled. These criminal aliens have previous convictions that include murder, lewd and lascivious acts upon a juvenile, theft and firearm violations.

The List includes foreign nationals who have been convicted of committing serious crimes in the United States and served their time. Each of these criminal aliens have been issued orders of removal, commonly referred to as deportation orders, but have eluded law enforcement.

ICE's Most Wanted Criminal Aliens List posted on the ICE website at <http://www.bice.immigration.gov>, enables the public to see photographs of those wanted. The toll free tip line, 1-800-BE-ALERT (1-800-232-5378), is staffed seven days a week, 24 hours per day.

The TSC Watchdog Group developed a system to track approvals of fiancé visas from the Bureau of Citizenship and Immigration Service's Texas Service Center (Center). The summary for the first week of June indicated that the Center only approved an average of 10 petitions per day, while a conservative estimate indicates that the Center receives an average of 40 petitions per business day. The report stated that this meant that the Center fell behind an estimated 26 petitions per business day or 546 petitions total for the last 30 days. Also, over 4300 petitions are still pending from October 1, 2002 through April 30, 2003. The TSC began compiling the report in order to encourage the Center to refocus on the growing backlog of fiancé visa petitions.

The American Immigration Law Foundation's Legal Action Center (LAC) is seeking a staff attorney to work with the LAC's director, attorneys, legal assistant and interns to provide practice materials and litigation resources to immigration practitioners; coordinator legal work nationally on a wide variety of removal and other immigration-law issues; write and submit amicus briefs to federal courts and agencies; and investigate and pursue affirmative impact litigation.

This position requires a law degree and admittance to a state bar. Candidates must also have at least three years immigration law practice, ideally focusing on removal defense and litigation. Please send cover letter, resume and salary requirements to HR-LAC, AILF, 918 F. Street, NW, Washington, DC 20004 or fax these to 202-783-7853 before July 1, 2003. To learn more about AILF or LAC, visit www.aifl.org.

The Department of Homeland Security (DHS) amended 8 CFR Part 212 this week to reflect the new titles of those who are given parole authority within the new organization. Component heads of the three bureaus are the Director of the Bureau of Citizenship and Immigration Services (BCIS), the Commissioner of the Bureau of Customs and Border Protection (CBP), and the Assistant Secretary for the Bureau of Immigration and Customs Enforcement (ICE). The change is part of the continuing process of conforming the text of Title 8 of the Code of Federal Regulations to the governmental structures established in the Homeland Security Act and the DHS Reorganization Plan.

The Philadelphia Industrial Development Corporation (PIDC), Philadelphia's non-profit economic development agency, and CanAm Enterprises, LLC (CanAm), introduced the PIDC Regional Center, which will offer investment opportunities pursuant to the EB-5 Pilot Program. The Immigration and Naturalization Service formally designated the PIDC Regional Center in February 2003. Capital generated through the Philadelphia U.S. Immigrant Investment Fund will be targeted at qualifying projects that enhance the tourist, technology, transportation, higher education, and manufacture and trade industries in Philadelphia.

8. International Roundup

Israel officials have decided to target top Hamas leaders, including founder Sheik Ahmed Yassin. The decision marks a policy change that will likely speed up an attack-revenge cycle that has already claimed 46 lives in four days.

Hamas leaders, who have not been targeted by Israel in the past 32 months of fighting, are now marked for death, according to an Israeli security official. However, an advisor to Israeli Prime Minister Ariel Sharon, insisted there was no policy change and that Israel would not target political leaders, unless the leaders have "politics of murder."

While Israel has killed more than 100 Palestinians in targeted attacks during nearly three years of fighting including many from the Hamas military wing, Israel did not go after top political leaders, possibly fearing a bloody backlash. Hamas issued a statement this week saying that the violence is likely to worsen, and it called on all foreigners to leave Israel.

The attacks this week began with a targeted attack on Abdel Aziz Rantisi, a Hamas co-founder and spokesman. Rantisi escaped an Israeli missile strike Wednesday with minor injuries, but his bodyguard and a bystander were killed. In response, a Hamas suicide bomber killed 17 people and wounded more than 70 in a Jerusalem bus attack a day later.

In return, Israel carried out three more missile strikes that killed five Hamas operatives and commanders, along with 13 bystanders, in Gaza City. The attacks wounded about 70 people.

The bloodshed has been some of the worst in months and has imperiled the Middle East peace plan formally launched just last week at a summit meeting in Jordan. However, Secretary of State Colin Powell will still meet in Jordan next week with other members of the so-called "Quartet" of Mideast mediators – the European Union, United Nations, and Russia to discuss the peace process.

Iranians demanded change by taking to the streets for three days this week in the biggest protests in months. On Wednesday, some 3,000 protestors heeded a call from U.S.-based Iranian exile satellite television and gathered near the Tehran University in support of a smaller, student protest against proposed privatizations in higher education.

About 80 rioters were arrested on Wednesday, but the protestors were not fazed and continued to chant slogans against the powerful Muslim clerics. Iran's supreme spiritual leader, Ayatollah Ali Khamenei, accused the United States of trying to create disorder and warned protestors that the government would be merciless against those acting in the interests of foreign powers. However, the public ignored his statements and staged the largest street demonstrations in the capital in four years.

The demonstrations on Friday caused traffic jams, stretching three miles from the dormitories where the first quiet protests began on Tuesday. Friday's protest was wider than the protests on the two previous nights and the government is likely to use force to prevent protests from erupting again.

High unemployment and frustration with Iran's strict Islamic laws have fed discontent among the overwhelmingly youthful population, around 70 percent of which is under 30 and has little memory of life before the revolution. While most believe that resolution from the inside of Iran would be the best situation, some also call for foreign intervention.

This week the State Department released its annual report to track the progress of foreign governments in combating international trafficking. Each year 800,000 to 900,000 people worldwide are taken across borders to work against their will. Of those, 18,000 to 20,000 are trafficked into the United States. Some victims are forced to work as prostitutes, while others labor in sweatshops or work as maids and housekeepers.

While Mexico remained on the list for the third straight year, it did not fall into the bottom category of the world's 15 worst-ranked countries, who may be denied certain U.S. aid. The 15 worst-ranked countries were Belize, Bosnia-Herzegovina, Burma, Cuba, Dominican Republic, Georgia, Greece, Haiti, Kazakhstan, Liberia, North Korea, Sudan, Suriname, Turkey and Uzbekistan.

9. Legislative Update

The following bill was recently introduced in Congress:

- HR 2435, sponsored by Rep Linda Sanchez [CA-39] (introduced 6/11/2003), to amend the Immigration and Nationality Act to provide for compensation to States incarcerating undocumented aliens charged with a felony or two or more misdemeanors.

http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:h2435ih.txt.pdf

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

10. State Department Visa Bulletin – July 2003

The Department of State has released the Bulletin for **July 2003**, which summarizes the current availability of immigrant numbers.

Family Numbers

	All Chargeability Areas Except Those Listed	MEXICO	PHILIPPINES
1 st	15DEC99	15MAY94	15MAR89
2A*	15MAY98	15DEC95	15MAY98
2B	01DEC94	15NOV91	01DEC94
3rd	15APR97	08MAR94	01JAN88
4th	15AUG91	15AUG91	01FEB81

*NOTE: For **July**, 2A numbers EXEMPT from per-country limit are available to applicants from all countries with priority dates earlier than **15DEC95**. 2A numbers SUBJECT to per-country limit are available to applicants chargeable to all countries EXCEPT MEXICO with priority dates beginning **15DEC95** and earlier than **15MAY98**. (All 2A numbers provided for MEXICO are exempt from the per-country limit; there are no 2A numbers for MEXICO subject to per-country limit.)

Employment Numbers

	All Chargeability Areas Except Those Listed	MEXICO	PHILIPPINES
1st	C	C	C
2nd	C	C	C
3rd	C	C	C
Other Workers	C	C	C
4th	C	C	C

Certain Religious Workers	C	C	C
5th	C	C	C
Targeted Employment Areas/Regional Centers	C	C	C

The Department of State has available a recorded message with visa availability information which can be heard at: (202) 663-1541. This recording will be updated in the middle of each month with information on cut-off dates for the following month.

B. DIVERSITY IMMIGRANT (DV) CATEGORY

Section 203(c) of the Immigration and Nationality Act provides a maximum of up to 55,000 immigrant visas each fiscal year to permit immigration opportunities for persons from countries other than the principal sources of current immigration to the United States. The Nicaraguan and Central American Relief Act (NCARA) passed by Congress in November 1997 stipulates that beginning with DV-99, and for as long as necessary, up to 5,000 of the 55,000 annually-allocated diversity visas will be made available for use under the NCARA program. This reduction has resulted in the DV-2003 annual limit being reduced to 50,000. DV visas are divided among six geographic regions. No one country can receive more than seven percent of the available diversity visas in any one year.

For **July**, immigrant numbers in the DV category are available to qualified DV-2003 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers BELOW the specified allocation cut-off number:

Region	All Chargeability Areas Except Those Listed Separately
Africa	AF 31,650
Asia	AS 18,050
Europe	EU 36,00
North America (Bahamas)	NA 19
Oceania	OC 615
South America (Caribbean)	SA 1,850

C. ADVANCE NOTIFICATION OF THE DIVERSITY (DV) IMMIGRANT CATEGORY RANK CUT-OFFS WHICH WILL APPLY IN **JULY**

For **August**, immigrant numbers in the DV category are available to qualified DV-2003 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers BELOW the specified allocation cut-off number:

Region	All Chargeability Areas Except Those Listed Separately
Africa	AF 37,200
Asia	AS 20,775
Europe	EU 37,200
North America (Bahamas)	NA 19
Oceania	OC 615
South America (Caribbean)	SA 1,850

D. IMPENDING OVERSUBSCRIPTION OF THE INDIA CHARGEABILITY

Continued heavy applicant demand in the INDIA Family Fourth (F4) preference category has required oversubscription of the INDIA chargeability for July, to hold issuances within the annual numerical limitation. (Visa Bulletin no. 54, alerted readers that oversubscription of the chargeability was possible.) The result has been the establishment of a cut-off date in the Family Fourth (F4) category that is earlier than the Worldwide date. The oversubscription will only impact applicants in the INDIA Family Fourth preference category.

This oversubscription will have no impact on visa availability in the India Employment categories, which will remain "Current".

E. RETROGRESSION OF THE PHILIPPINES FAMILY FIRST, THIRD, AND FOURTH PREFERENCE CUT-OFF DATES

Continued heavy applicant demand has required a retrogression of the PHILIPPINES Family First, Third, and Fourth preference cut-off dates for July. This has been done in an effort to keep the issuance level within the annual numerical limits. Further retrogressions, or "unavailability", prior the end of the fiscal year cannot be ruled out.

F. DETERMINATION OF THE NUMERICAL LIMITS ON IMMGRANT REQUIRED UNDER THE TERMS OF THE IMMIGRATION AND NATIONALITY ACT (INA)

The State Department is required to make a determination of the worldwide numerical limitations, as outlined in Section 201(c) and (d) of the INA, on an annual basis. These calculations are based in part on data provided by the Department of Homeland Security regarding the number of immediate relative adjustments in the preceding year and the number of aliens paroled in the United States under Section 212 (d)(5) in the second preceding year. Without this information, it is impossible to make an official determination of the annual limits.

To avoid delays in processing while waiting for the data, the VISA OFFICE bases allocations on the minimum annual limits outlined in Section 201 of the INA. The Department of State has determined the family and employment preference numerical limits for FY-2003 in accordance with the terms of Section 201 of the INA.

These numerical limitations for FY-2003 are as follows:

Worldwide Family-Sponsored Preference Limit: 226,000

Worldwide Employment Based Preference Limit: 171,532

Under INA Section 202 (A), the per-country limit is fixed at 7 % of the annual family and employment limits. For FY-2003, the per-country limit is 27,827. The dependant area annual limit is 2 %, or 7,951.

11. Man Pleads Guilty to Involvement in Scheme to Sell Visas

Rajwant S. Virk pled guilty in the United States District Court in Sacramento, Calif., to one count of conspiring to defraud the United States, bribe State Department officials and commit visa fraud.

Virk, 46, of Virginia, was one of nine defendants charged as part of an ongoing visa fraud investigation. After agreeing to cooperate with the government's continuing investigation, he will face the maximum penalty of five years in prison at his sentencing hearing in August.

Defendants Acey Johnson, who until recently was a Consular Associate employed in the consular section of the United States Embassy in Sri Lanka, and his spouse Long N. Lee, a State Department Foreign Service Officer and career State Department employee, are also in federal custody.

The defendants were allegedly involved in a scheme in which Johnson and Lee took hundreds of thousands of dollars in bribes between 2000 and 2003 in exchange for the issuance of visas to various foreign nationals, primarily from Vietnam and India. In Virk's plea, he admitted to making payments to Johnson and Lee in 1999 to obtain visas for others to enter the United States. Virk also admitted that in 2002 and 2003, he, along with Lee, coordinated the travel of aliens to Sri Lanka, where the aliens were given visas at the United States Embassy to enter the United States.

Virk also admitted that, after arranging for the issuance of the visas, Lee instructed Virk to purchase cashiers checks in amounts under \$10,000, payable to Lee and Johnson, to their relatives and to accounts that they controlled. Virk also admitted delivering cash to family members of Lee.

In addition to conspiracy charges that all of the defendants face, several of the defendants are also charged with wire fraud, bribery, visa fraud and other felonies.

12. More than 13,000 May Face Deportation

After following the United States government's demand earlier this year to register with the immigration service, nearly 13,000 men from 25 mainly Muslim countries said to harbor terrorist groups are facing deportation. The registration required noncitizens from the indicated countries to register from December 2002 through April 2003.

Approximately 82,000 adult men over the age of 16 registered, but of those, 13,000 have been found to be living in this country illegally. Many that registered hoped

that the government would be lenient on them because of their willingness to cooperate with authorities.

Of the 82,000 that have registered and the tens of thousands that have been screened at airports and border crossings, only 11 individuals were found to have links to terrorism.

Officials say more than 600 Arab and Muslim illegal immigrants were deported during the first wave of expulsions after Sept. 11. However, the Justice Department stopped releasing figures after the number of arrested immigrants went to 1,200.

In all, deportations of illegal immigrants from Asian and African countries have surged by nearly 27 percent in the last two years. The number of Pakistani, Jordanians, Lebanese and Moroccans deported during that time has doubled. The number of Egyptians deported has nearly tripled.

Officials say they can no longer ignore illegal immigrants from countries that pose a security risk. The Department of Homeland Security (DHS) notes that several of the Sept. 11 hijackers were in the country illegally at the time of the attacks. "If a loophole can be exploited by an immigrant, it can also be exploited by a terrorist," said Jim Chaparro, acting director for interior enforcement at the DHS.

According to immigration lawyers, some of the men facing deportation have waited months or years for officials to process applications to legalize their status. Immigration lawyers believe that a substantial number of these men may be able to avoid deportation because the delay is the only reason that they have an illegal status.

13. U.S. To Begin Using SEVIS to Identify Security Threats

SEVIS, the Student and Exchange Visitor Information System, is a database being assembled to track the 1.2 million foreign students in the United States. U.S. schools and universities have a deadline of August 1 to provide SEVIS with information on all foreign students enrolled in their institutions. On August 1, United States customs and immigration officials will begin examining SEVIS data to identify groups of suspected violators or enrollment trends that could indicate a threat to national security.

Bureau of Immigration and Customs Enforcement (BICE) spokesman Chris Bentley said that authorities would focus on looking for suspected risks to national security rather than trying to keep track of every suspected student visa violator. About 10,000 students may have violated their student visas, which is double the amount of federal agents available to enforce immigration policy. Violations usually occur when the students leave school for jobs without notifying immigration authorities. Visa violators will face detainment and deportation.

The Internet-based SEVIS system has been under development since Congress passed a law in the mid 1990s. After the September 11 attacks, the development and implementation of SEVIS became more urgent. The mandatory compliance date for all authorized schools to utilize SEVIS was January 30, 2003. Schools have until

August 1, 2003 to complete entering records for all their current F-1 or M-1 non-immigrants students in SEVIS and to report their enrollment.

Through SEVIS authorities hope to be able to spot terrorists who may use U.S. educational institutions in order to enter the United States. At least one of the September 11 hijackers entered the U.S. on a student visa but never attended class, and two others entered on tourist visas and applied for student visas, which were approved six months after the attacks.

SEVIS will provide the government, schools and exchange programs a way to immediately access information about foreign students, exchange visitors and their dependents. Ports of entry and U.S. consulates will be linked through the Internet with the various schools and programs that accept foreign students. If certain changes need to be made, such as if a student drops out or is disciplined for criminal behavior, the institution has 24 hours to notify BCIS. Schools have 21 days to file a change of address and 30 days to report if a student fails to show up.

Through the new system, authorities will be able to monitor each institution's compliance with regulations as well as track the actions of foreign students, thereby identifying possible threats to U.S. national security.

14. Immigration Agents Guilty of Violating Rights of Immigrant

This week, a Houston jury found three federal immigration officials guilty of failing to render aid to an illegal immigrant during a raid in Bryan, Texas, on March 25, 2001. The victim, 47-year-old Serafin Olvera-Carrera, broke his neck during the raid and spent seven hours in paralyzing pain until a nurse at a jail in Comal County secured medical care for him.

The nurse testified that Overa-Carrera pleaded with the officials for hours to get help for him. The officials, however, dragged Overa-Carrera's paralyzed body across the ground to the bus carrying the 21 illegal immigrants. They then joked about throwing the victim into the luggage compartment of the bus.

The officers testified that they believed Overa-Carrera was not really injured but rather was faking his injuries.

Overa-Carrera, the father of five children, lived in the United States as an illegal immigrant since 1977. He worked as a roofer in Bryan at the time of the raid.

Prosecutors also charged two of the agents with using excessive force. One of the agents, Richard Henry Gonzales, was found guilty of this charge for spraying the immigrant with pepper spray.

Gonzales faces up to 20 years in prison and \$500,000 in fines. The other two officials each face up to 10 years in prison and \$250,000 in fines, but each is presently out on bond. Gonzales, who has family outside the United States and a two-count conviction, remains in jail. The judge ruled that he should be jailed immediately as a potential flight risk. A sentencing hearing is scheduled for September 17.

15. New Congressional Report Does Not Support L-1 Visa Abuse Arguments

A new report released this week by the Congressional Research Service, the research arm of the Library of Congress, seeks to provide statistical documentation regarding L-1 visa usage in the US and whether there is any substance to recent reports in the media that the category's use is surging and the L-1 has become a "backdoor" for companies seeking to avoid the H-1B visa's prevailing wage requirements.

The most notable finding of the report is that L-1 visa usage has actually declined over the last two years. Total L visa usage in 2000 was at about 120,000. Usage declined in 2001 and again in 2002 with last year's numbers at 112,000. And the first six months of 2003 show a further decline compared to a year earlier.

Furthermore, only about half of the 112,000 visas are actually L-1 visas. The rest are L-2 visas for spouses and children of L-1 visa holders. So less than 60,000 L-1 visas are being issued per year.

The report did show that Indians are disproportionately using the L-1 visa. More than a quarter of L-1 visas being issued today are for Indian workers. The next 25% are being used roughly equally by British and Japanese nationals. After that, no country has more than 5% of the market.