

Siskind's Immigration Bulletin
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SSHD serves immigration clients throughout the world from its offices in the US,
Canada and the People's Republic of China. To schedule a telephone or in-person
consultation with the firm, go to <http://www.visalaw.com/intake.html>. Editor: Greg
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1. Openers

Dear Readers:

I am writing this letter in the car on the way back from the annual meeting of the American Immigration Lawyers Association in New Orleans (don't worry, I'm in the passenger seat!). The annual meeting of AILA is THE major professional event of the year for immigration lawyers and that probably explains why nearly 3,000 people attend every year. The program is comprised of five days of educational programs and workshops, association business meetings, and social events. But what makes the program most useful are the numerous informal conversations attendees have with each other. More learning frequently goes on in the halls and over coffee in the lobby than in the sessions.

The AILA meeting also attracts the government officials in the immigration world. For example, Eduardo Aguirre, the head of the Bureau of Citizenship and Immigration Services, addressed the AILA membership. Mr. Aguirre, an immigrant himself, discussed the BCIS' goals including improving the agency's level of service.

One of the most impressive aspects of the meeting is the huge exhibit hall. This year more than a dozen companies exhibited selling case management software products to AILA members. These products have revolutionized immigration law by enabling lawyers to rapidly prepare cases and more effectively and efficiently manage their caseloads. As the technology columnist for Immigration Law Today, AILA's monthly magazine, I took the opportunity to learn about the new features available in each of these products. I also spoke on the subject of case management systems during the conference and gave tips on how to pick the right systems and maximize their value in the typical immigration law office.

This was my first meeting serving as chair of the Physicians Committee of AILA. Our committee will be working on a number of important issues this year including the upcoming expiration of the State 30 J-1 waiver program, the impact of the H-1b cap on communities with physician shortages, ongoing problems in the adjudication of O-1 petitions and extraordinary delays in issuing security clearances.

If you are a lawyer handling immigration matters and do not attend the annual AILA meeting, you are really missing out. I have attended every annual meeting since I started handling immigration matters in 1990 and consider the meeting a "must" every year.

In this week's ABCs article, I have included a simple flow chart showing how L-1 cases work. I intend to develop more of these flow charts in the coming months and welcome suggestions from readers on how they might be improved.

We also have an article that some might find a bit surprising, covering a recent speech by James Ziglar, President Bush's first appointed head of the Immigration and Naturalization Service. Ziglar offers tough criticism of his former boss' shortchanging of civil liberties in the war on terror. The Bush Administration's zealotry in pushing American courts to curtail various liberties for immigrants as part of the war on terror has drawn criticism from many groups. Of course, the Administration counters that in a war, sacrifices must be made and that is the case today.

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 – L-1 Visa Flow Chart

This is another in our series of ABC's articles that illustrate how certain cases progress. This week we present a flow chart of the L-1 visa. To view this pdf file, please visit: <http://www.visalaw.com/03jun3/L1.pdf>

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 - A Friend of mine won the green card lottery last year. She is married and wants to get a divorce. Will her husband get the green card?

A - No. The couple would need to be married at the time permanent residency status is awarded.

Q – My husband and I are in the US on F-1 and F-2 visa with a baby born here. Is there any way for us to apply for green card because we have to be here to take care of our baby?

A - No, the baby will not be able to help. This is one of the most common questions we get. A child who is born in the US is a US citizen and is entitled to live in the US. But you would have to find someone else with legal status to care for your child if you could not find a visa in your own right. The child could sponsor you, but only after he or she turns 21.

Q – Can an undocumented immigrant with a pending I-485 join the services? Are there any programs allowing this?

A - My understanding is that the Armed Forces will not sponsor someone for a visa or green card, but if they are legal to work, they need not be a citizen or permanent resident. So if someone has an I-485 pending and has a work card as a result, they would be eligible to join up.

Q – What kind of documents required for H-1b to leave the country?

A - Depends. Assuming you have the approval notice from BCIS, you would take it along with a letter from your employer documenting the job is still offered on the same terms as approved by the BCIS, recent paystubs, a copy of your application package, the filing fee, non-immigrant visa application forms and your photos.

4. Border News

This week the General Accounting Office released testimony by Richard M. Stana, the Director of Homeland Security and Justice Issues. His remarks are included in the report "Challenges Facing the Department of Homeland Security in Balancing its Border Security and Trade Facilitation Missions." The remarks were drawn from statements made before the House Subcommittee on Infrastructure and Border Security. In his testimony, Stana commented on the ability of the Bureau of Customs and Border Protection (BCBP) to balance the nation's security and commercial needs. This task falls to the BCBP because it consists of elements of the former U.S. Customs Service, the Border Patrol and Inspections, and the former Animal and Plant Health Inspection Service, three services that work directly with commercial imports and border security.

Stana says BCBP faces many challenges as the workload of cargo containers begins to increase again after an economic slowdown, in addition to processing hundreds of millions of travelers at the nation's 300 ports of entry and hundreds of thousands of aliens attempting to cross the border illegally. Stana said the BCBP has made some progress but will need to be diligent as it implements new measures such as the trade processing information system and the new entry-exit system (US VISIT). The transformation of the Department of Homeland Security has been designated as "high risk" because of three factors: the enormous size of the undertaking, the number of components which must be synchronized, and the seriousness of the consequences that could result if such measures fail.

Stana's testimony can be viewed online at <http://www.gao.gov/atext/d03902t.txt>

Officials have identified the two remaining people who died last month during a smuggling incident in Victoria, Texas. Agents with the Bureau of Immigration and Customs Enforcement, the investigative arm of the Department of Homeland Security, said the two males are Chelve Benitez-Jaramillo and Rogelio Dominguez-Benitez of Mexico. The two men were among 19 immigrants who suffocated inside an abandoned tractor-trailer. There were fifty-five survivors.

Members of the San Juan Capistrano immigrant community in California are taking a stand following several arrests by Border Patrol officials. Over 400 people gathered Wednesday to meet with the Mexican consul, lawyers, and a U.S. immigration official

about the situation. While arrests by the Border Patrol are a way of life in the city's immigrant community, by far the largest in southern Orange County, recent stories of terror and fear have led to a community outcry. Last week's arrest of a man whose children were in school at the time he was taken away seems to have caused the surge of fear and anger. Many undocumented immigrants in the community are remaining home and are finding ways to have other people perform daily tasks in order to avoid contact with the Border Patrol. Border Patrol officials say that the charges are overblown and that agents have not strayed from their usual enforcement activities.

5. News From The Courts

Adel Nagi El Moraghy v. John Ashcroft

Adel Nagi El Moraghy, the Petitioner, is a Coptic Christian Egyptian national, who sought asylum based on grounds of religious persecution. The First Circuit Court of Appeals ruled that the Board of Immigration Appeals (BIA) affirmed the denial of asylum using its relatively new summary affirmance procedure and it should not have done so. The court held that they could not uphold the immigration judge's decision because the immigration judge misused State Department country reports and failed to address the issue of past persecution. However, the court made no decision as to the relief that the petitioner sought.

Regardless of the recent changes in immigration law, the court held that country condition reports are still relevant as to credibility, whether or not they specifically name the applicant. Here, the court held that the immigration judge misused the report. The immigration judge improperly imposed a requirement that the country condition reports refer specifically to the petitioner or his family members.

On the issue of failure to address past persecution, the court said "the absence of reasoned discussion of past persecution undercut any meaningful review of the immigration judge's fear of future persecution finding, because we do not know whether El Moraghy should have had the benefit of the regulatory presumption of fear of persecution based on prior events." While it may be that the judge found El Moraghy to not be credible, he did not make such a finding, nor explain the basis in evidence for such a finding, both of which are basic errors. The court refused to consider El Moraghy's withholding of removal claim or his CAT claim, both of which require that petitioner meet a higher burden of proof.

Ghafour Asemani v. The Islamic of Republic Iran

Ghafour Asemani filed a complaint in the District Court of the District of Columbia against the Islamic Republic of Iran, the Ayatollah Khamenei, and several agencies of the Government of Iran, alleging he was tortured and falsely detained by defendants in July 2000. During the proceedings, Asemani claimed that he was a "national of the United States" at the time he suffered the injuries of which he complains and that he was a victim of "torture" for purposes of the Foreign Sovereign Immunities Act (FSIA). Suit under the "torture" provision of the FSIA is available only when the victim was a "national of the United States (as that term is defined in section 101

(a)(22) of the Immigration and Nationality Act) when the act upon which the claim is based occurred." To meet this requirement, the party must either be a citizen of the United States, or, if not a citizen, owe permanent allegiance to the United States.

Asemani, who was born in Iran to Iranian parents, was not a U.S. citizen. However, he lived in the United States since 1984 and became a permanent citizen in 1994. Asemani previously applied for citizenship, but his application was denied as premature in 1997. Then, in 1998, he filed an oath of allegiance to the United States. He then pursued his application for citizenship through an interview with an Immigration and Naturalization officer in July 1999. Therefore, the court held that under the current interpretation of the term "national," the plaintiff demonstrated his permanent allegiance to the United States sufficient to constitute him as a "national" within the meaning of the FSIA. In making this decision, the court looked at recent cases that suggest a person may become a "national" of the United States by applying for citizenship.

In the Matter of Octavia

Octavia, a pseudonym for a woman who still lives under a threat of death, filed for asylum to the United States after receiving several beatings by her husband in Guatemala. The immigration judge granted asylum, concluding that Octavia was part of a "clearly definable social group," which he identified as "women in Guatemalan society who resist male domination by living independently and self-sufficiently." The judge cited a number of failures by Guatemalan authorities to assist Octavia's several attempts to protect herself and her children. INS attorneys argued that recently adopted laws had provided more protection for women. But based on U.S. government reports, "violence against women remains a problem in Guatemala."

6. Government Processing Times

Missouri Service Center Processing Time Report 6/15/03 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 23, 2003
I-129	Petition for A Nonimmigrant Worker	
I-129S	Nonimmigrant Petition Based on Blanket L Petition	

I-129F	Fiance(e)	May 6, 2003
I-130	Petition for Immediate Relative	August 1, 2001
I-130	Other	
I-131	Application for Travel Document	May 9, 2003
I-140	Immigrant Petition for Alien Worker	
I-212	Application for Permission to Reapply for Admission to the US After Deportation or Removal	June 1, 2003
I-290B	Notice of Appeal to the Administration Appeals Unit (AAU)	November 29, 2002
I-360	Petition for Widowed/Special Immigration	
I-485	Application to Register Permanent Residence or to Adjust Status	March 5, 2003
I-485	Asylee	
I-526	Immigrant Petition By Alien Entrepreneur	
I-539	Application to Extend/Change Nonimmigrant Status	April 9, 2003
I-601	Application for Waiver of Grounds of Excludability	May 22, 2003
I-687	*	
I-690	Application for Waiver of Excludability	May 19, 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	May 30, 2003
I-817	Application for Family Unity Benefits	May 13, 2003
I-821	Application for Temporary Protected Status	

I-824	Application for Action on an Approved Application or Petition	May 22, 2003
I-829	Petition by Entrepreneur to Remove Conditions	

California Service Center Processing Time Report 6/16/03		
Form		We are now processing cases with these receipt dates:
I-90	To replace lost, damaged or destroyed I-551	7/12/2002
I-90	To renew expiring I-551	7/12/2002
I-102	For replacement/initial nonimmigrant arrival/departure form	6/14/2003
I-129	For H-1B classification COS	2/5/2003
I-129	For H-1B classification EOS	11/23/2002
I-129	For H-2A classification	6/15/2003
I-129	For H-2B classification	5/5/2003
I-129	For H-3 classification	5/4/2003
I-129	For E classification	11/23/2002
I-129	For L classification	5/12/2003
I-129	For Blanket L petition	6/15/2003
I-129	O classification	4/15/2003
I-129	P classification	4/15/2003
I-129	Q classification	4/15/2003
I-129	R classification	12/18/2002
I-129	TN classification	
I-129F	(Fiancée)	2/25/2003
I-130	For spouse, parent, or child (under 21) of a United States citizen	1/14/2003
I-130	For Unmarried son/daughter (over 21) of a United States citizen	4/6/2001

I-130	For Spouse/Child of a lawful permanent resident	6/4/1998
I-130	For Unmarried son/daughter (over 21) of a lawful permanent resident	4/6/1998
I-130	For Married Son/daughter of a United States citizen	4/6/2001
I-130	For Brother/Sister of United States citizen	4/6/1998
I-131	For Advance Parole	4/2/2003
I-131	For Advance Parole for HRIFA principal applicant	
I-131	For Reentry Permit	
I-131	For Refugee Travel Document	
I-140A	(extraordinary ability)	11/14/2002
I-140B	(outstanding professor or researcher)	2/3/2003
I-140C	(multinational executive or manager)	1/27/2002
I-140D	(professional holding adv. degree/alien of exceptional ability)	6/4/2003
I-140E	Skilled worker or professional	2/19/2003
I-140I	(National Interest Waiver)	5/15/2003
I-140G	(other worker)	4/7/2002
1-212	Permission to reapply for admission after deportation/removal	7/27/2001
I-360	Petition for Amerasian, widow(er), or Special Immigrant	1/29/2003
I-485	Asylum-based	
I-485	Refugee-based	
I-485	Employment-based	11/16/2001
I-485	Haitian Refugee Immigration Fairness Act (HRIFA)-based	
I-539	For extension of stay for F or M non-immigrant	5/2/2003
I-539	For extension of stay for J non-immigrant	
I-539	For extension of stay for L or H non-immigrant	5/2/2003
I-539	For extension of stay for other non-immigrant	5/2/2003
I-539	To change nonimmigrant classification to F or M	5/2/2003
I-539	To change nonimmigrant classification to J	
I-539	To change nonimmigrant classification to L or H	5/2/2003
I-539	To change to other nonimmigrant	5/2/2003

	classification	
I-612	Waiver of foreign residence requirement	4/23/2003
I-730	Refugee/Asylee Relative Petition	
I-751	Petition to Remove Conditions on Residence	8/21/2002
I-765	For initial asylee or asylum applicant authorization	Current
I-765	For employment authorization associated with Hurricane Mitch TPS	Current
I-765	For employment authorization associated with El Salvador TPS	Current
I-765	For employment authorization while I-485 is pending	2/19/2003
I-765	For all other employment authorization	3/27/2003
I-817	Application for Family Unity Benefits	6/14/2002
I-821	For El Salvador	4/17/2002
I-821	For Hurricane Mitch countries	12/20/2002
I-824	Application for Action on an Approved Application or Petition	4/8/2002
I-829	Petition by Entrepreneur to Remove Conditions	10/23/2000
I-914	Application for T Non-immigrant	

Texas Service Center Processing Time Report June 15, 2003	
Form	We are Processing cases with these receipt notice dates:
I-90 to replace lost, damaged or destroyed I-551	4/20/2002
I-90 to renew expiring I-551	n/a
I-102 for replacement/initial nonimmigrant arrival/departure form	8/6/2002
I-129 for H1B classification	12/15/2002
I-129 for H2A classification	5/26/2003
I-129 for H2B classification	3/19/2003
I-129 for H3 classification	4/17/2003
I-129 for L classification	5/13/2003
I-129 for Blanket L petition	5/13/2003
I-129 for O classification	3/10/2003
I-129 for P classification	3/4/2003
I-129 for Q or R classification Q	Q 5/9/2003 - R 2/10/2003

I-129 for TN classification	n/a
I-129F (fiancée)	12/30/2002
I-129 For E classification	1/21/2003
I-130 for Spouse, Parent or Child of US Citizen	6/15/2001
I-130 for Spouse of Lawful Permanent Resident	4/3/1998
I-130 for Other Relative	4/3/1998
I-131 for Advance Parole	12/5/2002
I-131 for Advance Parole for HRIFA principal applicant	n/a
I-131 for Reentry Permit	n/a
I-131 for Refugee Travel Document	n/a
I-140 A (extraordinary ability) IST PREF	6/10/2002
I-140 B (outstanding professor or researcher) IST PREF	6/10/2002
I-140 C (multinational executive or manager) IST PREF	6/10/2002
I-140 D (professional holding adv. degree/alien of exceptional ability) 2ND PREF	10/15/2002
I-140 E (skilled worker or professional) 3RD PREF	10/9/2002
I-140 I (National Interest Waiver)	7/10/2002
I-140 G (other worker) 3RD PREF	10/9/2002
I-212 permission to reapply for admission after deportation/removal	n/a
I-360 petition for Amerasian, widow(er), or Special Immigrant	5/5/2003
I-485 Asylum-based	n/a
I-485 Refugee-based	n/a
I-485 Employment-based	12/1/2000
I-485 Haitian Refugee Immigration Fairness Act (HRIFA)-based	n/a
I-526 Immigrant Petition by Alien Entrepreneur	6/3/2003
I-539 for extension of stay for F or M non-immigrant	3/18/2003
I-539 for extension of stay for J non-immigrant	n/a
I-539 for extension of stay for L or H non-immigrant	3/18/2003
I-539 for extension of stay for other non-immigrant	3/18/2003
I-539 to change nonimmigrant classification to F or M	4/1/2003
I-539 to change nonimmigrant classification to J	4/1/2003
I-539 to change nonimmigrant classification to L or H	4/1/2003
I-539 to change to other nonimmigrant classification	4/1/2003
I-612 waiver of foreign residence requirement	9/17/2002
I-730 Refugee/Asylee Relative Petition	n/a
I-751 Petition to Remove Conditions on Residence	10/31/2002
I-765 for initial asylee or asylum applicant authorization C-8	4/22/2003

I-765 for employment authorization associated with Hurricane Mitch TPS	12/1/2002
I-765 for employment authorization associated with El Salvador TPS	9/1/2002
I-765 for employment authorization while I-485 is pending C-9	6/4/2003
I-765 for all other employment authorization	2/28/2003
I-817 Application for Family Unity Benefits	12/17/2002
I-821 for El Salvador	4/13/2001
I-821 for Hurricane Mitch countries	8/17/1999
I-824 Application for Action on an Approved Application or Petition	8/8/2002
I-829 Petition by Entrepreneur to Remove Conditions	3/22/1999
I-914 Application for T Non-Immigrant	n/a

Nebraska Service Center Processing Time Report June 15, 2003	
Form	We are Processing cases with receipt notice dates on or before:
I-90 to replace lost, damaged or destroyed I-551	4/22/2002
I-90 to renew expiring I-551	4/30/2002
I-102 for replacement/initial nonimmigrant arrival/departure form	4/26/2003
I-129 for H1B classification	4/3/2003
I-129 for H2A classification	6/1/2003
I-129 for H2B classification	5/23/2003
I-129 for H3 classification	4/18/2003
I-129 for L classification	5/2/2003
I-129 for Blanket L petition	5/9/2003
I-129 for O classification	4/22/2003
I-129 for P classification	5/14/2003
I-129 for Q or R classification	3/26/2002
I-129 for TN classification	4/18/2003
I-129F (fiancée)	1/7/2003
I-130 for spouse, parent or child (under 21) of a United States citizen	6/3/2002
I-130 for son or daughter (over 21) of a United States citizen	7/18/2001
I-130 for brother or sister of a United States citizen	7/18/2001
I-130 for spouse of a lawful permanent resident	5/17/2001

I-130 for unmarried child under 21 of a lawful permanent resident	7/18/2001
I-130 for unmarried son or daughter over 21 of lawful permanent resident	7/18/2001
I-131 for Advance Parole	2/19/2003
I-131 for Advance Parole for HRIFA principal applicant	1/25/2003
I-131 for Reentry Permit	5/31/2002
I-131 for Refugee Travel Document	3/10/2003
I-140 A (extraordinary ability)	3/3/2003
I-140 B (outstanding professor or researcher)	1/28/2003
I-140 C (multinational executive or manager)	2/12/2003
I-140 D (professional holding adv. degree/alien of exceptional ability)	2/6/2003
I-140 E (skilled worker or professional)	1/28/2003
I-140 I (National Interest Waiver)	11/8/2002
I-140 G (other worker)	3/3/2003
I-212 permission to reapply for admission after deportation/removal	1/7/2002
I-360 petition for Amerasian, widow(er), or Special Immigrant	3/3/2003
I-485 Asylum-based	2/1/1999
I-485 Refugee-based	8/22/2001
I-485 Employment-based	8/22/2001
I-485 Haitian Refugee Immigration Fairness Act (HRIFA)-based	1/11/2000
I-526 Immigrant Petition by Alien Entrepreneur	not processed at the NSC
I-539 for extension of stay for F or M non-immigrant	5/16/2003
I-539 for extension of stay for J non-immigrant	4/30/2003
I-539 for extension of stay for L or H non-immigrant	3/31/2003
I-539 for extension of stay for other non-immigrant	11/25/2002
I-539 to change nonimmigrant classification to F or M	12/23/2002
I-539 to change nonimmigrant classification to J	4/15/2003
I-539 to change nonimmigrant classification to L or H	4/16/2003
I-539 to change to other nonimmigrant classification	9/25/2002
I-612 waiver of foreign residence	11/11/2002

requirement	
I-730 Refugee/Asylee Relative Petition	8/15/2002
I-751 Petition to Remove Conditions on Residence	6/12/2002
I-765 for initial asylee or asylum applicant authorization	4/24/2003
I-765 for employment authorization associated with Hurricane Mitch TPS	6/1/2003
I-765 for employment authorization associated with El Salvador TPS	6/1/2003
I-765 for employment authorization while I-485 is pending	2/19/2003
I-765 for all other employment authorization	2/4/2003
I-817 Application for Family Unity Benefits	3/10/2002
I-821 for El Salvador	6/1/2003
I-821 for Hurricane Mitch countries	6/1/2003
I-824 Application for Action on an Approved Application or Petition	10/21/2002
I-829 Petition by Entrepreneur to Remove Conditions	not processed at the NSC
I-914 Application for T Non-Immigrant	not processed at the NSC
I-131 HRIFA BLOCK F	1/10/2000
I-485 INDOCHINA	not yet adjudicated

7. News Bytes

The Bureau of Citizenship and Immigration Services (BCIS) this week reminded those eligible Hondurans and Nicaraguans to immediately re-register for Temporary Protected Status (TPS) to maintain TPS and employment authorization for the 18-month period beginning on July 5, 2003 and ending on January 5, 2005. BCIS Service Centers must physically receive all completed re-registration applications for TPS by the close of business on July 7, 2003. This re-registration is necessary regardless of the notice in the Federal Register on May 5, 2003 automatically extending the Employment Authorization Document (EAD) validity period from July 5, 2003 to December 5, 2003.

To re-register for the extension until January 5, 2005, a TPS applicant must submit Form I-821 Application for Temporary Protected Status AND Form I-765 (Application for Employment Authorization), as well as two identification photographs (1 1/2" x 1 1/2"). If the applicant is only seeking to re-register for TPS and not seeking an EAD extension, there is no filing fee. However, all applicants seeking an extension of employment authorization until January 5, 2005 must submit a \$120 filing fee with Form I-765 (Application for Employment Authorization). The applicant may request a fee waiver in accordance with the regulations. Applicants for an extension of TPS benefits do not need to submit new fingerprints and therefore do not need to submit a \$50 fee for fingerprinting. Children beneficiaries of TPS who have reached the age

of fourteen but were not previously fingerprinted must pay the \$50 fingerprint fee with the application for extension.

The George Washington University Law School's Immigration Clinic won another major victory this spring by securing asylum for an Ethiopian citizen. The client, a member of the All Amhara People's Organization (AAPO) in Ethiopia, had various duties including working with its Agitation and Propaganda Committee. During one AAPO demonstration he was arrested by authorities and detained for three months. According to the client, while in prison he was beaten on his back and feet, burned with a hot iron and repeatedly raped by a guard. After his release from prison, he made his way to the United States where he applied for asylum.

The Immigration Clinic has provided legal representation to aliens in the D.C. metropolitan area since 1979. All of the programs in the Community Legal Clinics share a common goal – to provide members of the community with critically needed legal services while giving motivated law students the opportunity to experience the practical application of law and to develop skills as negotiators, advocates and litigators within an exciting and supportive educational environment.

An intra-office memo from the Immigration and Naturalization (INS) dated March 22, 2002 surfaced this week. The memo, written by James Ziglar when he was the Commissioner for the INS, led to many changes in the way the department dealt with immigration issues. The document detailed a new plan for enforcement and implementation of the department's "zero tolerance policy." The one-page document details strict guidelines for INS employees and explains that all employees must follow all Headquarters-issued policy and field instructions. All members of authority or management were required to read and understand the field instructions, and were required to ensure that each employee read and understood the guidance. The document states that those individuals who fail to abide by the guidelines will be "disciplined appropriately."

A census report released this week announced that Hispanics are now the nation's largest minority group. The new census figures also show that Latinos accounted for half the country's population growth two years after the 2000 Census was taken.

The nation's Hispanic population numbered 38.8 million in July 2002, according to population estimates released. The nation's African American population, which has been the nation's largest minority since the country was founded, numbered 38.3.

William Yates, Acting Associate Director for Operations at the Bureau of Citizenship and Immigration Services (BCIS), announced interim guidance for amendments affecting adjudication of petitions for alien entrepreneurs. The memorandum provides guidance on certain changes affecting the adjudication of Form I-526, Immigrant Petition by Alien Entrepreneur, and Form I-829, Petition by Alien

Entrepreneur to Remove Conditions, that were pending or filed on or after November 2, 2002.

The Twenty-First Century Department of Justice Appropriations Authorization Act (Public Law 107-273), signed into law by the President on the above stated date, affects the adjudication of Form I-526 petitions pending or filed on or after November 2, 2002. The changes include: amending sections 203(b)(5) and 216A of the Immigration and Nationality Act (INA) so that an alien entrepreneur is no longer required to establish a commercial enterprise; regulations under 8 CFR 204.6 (h)(3) has been superceded in part by Public Law 107-273 due to the removal of the requirement that the alien entrepreneur establish the commercial enterprise, however, the section is still relevant in that it describes under what circumstances a commercial enterprise in existence prior to November 29, 1990 will be considered "new" for the purposes of this law; a business established prior to November 29, 1990 may be considered a new commercial enterprise under 8 CFR 204.6 (e) and (h) if since that date it has been expanded so that a substantial change in the net worth or number of employees has occurred. Substantial change means a 40 percent increase in either the net worth or the number of employees; a commercial enterprise established prior to November 29, 1990 will be considered to be new under 8 CFR 204.6 (e) and (h) if since that date it has been restructured or reorganized so that a new commercial enterprise results; the new law does not permit an alien entrepreneur who filed a Form I-526 petition after August 31, 1998, to meet the requirements for removal of conditions by combining investments in multiple commercial enterprises; section 203 (b)(5) of the INA is amended to include a definition of "full-time" employment as a position that requires at least 35 hours of service per week at any time; (7) Section 216A of the INA is amended to include "limited partnership" within the term "commercial enterprise."

The Department of State has distributed a memo to consular section chiefs providing guidance on a change in clearance procedures for certain applicants subject to Visas Mantis. The length of validity of clearances has been extended to one year depending on circumstances. The DOS said it is reinstating post-check visas and longer validity clearance for certain applicants, and posts will no longer need to seek a Visas Mantis clearance in advance of visa issuance, provided certain conditions are met. First, the applicant must be returning to a US government-sponsored program to perform the same activities involving sensitive technologies on the Technology Alert List. The post must have evidence of the original issuing post that a Mantis authorization was received, and the post must send a post-check Visas Mantis cable containing all the information normally included.

A Department of Homeland Security final rule was printed in a recent issue of the Federal Register that adds and revises definitions, redefines powers and authorities of certain agents and officials and amends an internal review process for alleged violations of enforcement activity standards. The rule can be viewed online at <http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/2003/03-14931.htm>

8. International Roundup

European leaders met in Greece this week to discuss the management of migration in the European Union. Officials were expected to discuss reinforcement of immigration checks at the union's borders and the creation of a new agency to coordinate joint EU border-control operations in the Mediterranean Sea, and other areas such as the Italian coast that have been swamped by illegal immigrants. Leaders were prepared to debate ways to control the influx of illegal immigrants and streamline immigration laws so that the EU can better share the burden of illegal immigrants and asylum seekers. Britain hopes to reach an accord that would prevent "asylum shopping." Greek Prime Minister Costas Simitis, who currently holds the rotating, six-month presidency of the EU, hopes to generate a consensus for improved management of legal migration now, before it admits 10 new members and its borders expand northward, eastward and southward. Greece wants the EU to create a database of EU visas and increase security at border checkpoints.

Australia's Family Court ruled Wednesday that it has power to release children being held in detention centers and said the indefinite detention of children was unlawful. The ruling was another blow to the Government's policy on mandatory detention, but administration officials said they might appeal to the High Court.

Immigration Minister Philip Ruddock, said the ruling gives the wrong message to people smugglers, saying he believes immigration detention laws were "beyond the reach" of the Family Court's jurisdiction.

According to the Sydney Morning Herald, there are currently 85 children of asylum seekers in detention centers, 10 in alternative detention at Woomera, and seven living in foster homes.

A group of 150 immigrant detainees in Malta broke out of their detention center and rioted after one of them was placed in solitary confinement for attempting to escape. A policeman was injured and property was damaged in a series of clashes Tuesday night between police and the detainees, who are among 1000 immigrants at the center scheduled to be deported. Wednesday morning officials said the situation had returned to normal.

Italian Reform Minister Umberto Bossi is under fire for remarks he made in an interview published by Italian daily Corriere della Sera, in which he seemed to call for the use of military force to drive away illegal immigrants.

Bossi said that he was impatient with the government's failure to implement new immigration legislation that was approved a year ago by parliament.

"On Friday, I want to hear the sound of cannons," Bossi was quoted as saying. "Otherwise, I'm saying goodbye."

He later denied the quote and accused newspaper of inventing the comments.

"The content of the interview does not reflect my thinking in any way nor does it reflect the sense of my words in what was a very brief exchange," he said.

Despite his denial, the Minister is facing a storm of criticism from several government leaders, both opponents and allies.

"This is a caveman idea," said UDC Party leader Marco Follini. "Bossi says he wants to hear cannons, many others would like to hear him be quiet."

9. Legislative Update

The following bills were recently introduced in Congress:

- HJ Res 58, sponsored by Rep Tancredo, Thomas G. [R-CO-6] (introduced 5/22/2003), disapproving the rules submitted by the Secretary of the Treasury relating to section 326(a) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001. (USA PATRIOT ACT) Act of 2001. Disapproves of final rules of the Treasury Department on April 30 permitting financial institutions to accept certain forms of identification from noncitizens, including the Matricula Consular card.

http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:hj58ih.txt.pdf

- HR 2258, sponsored by Rep Rodriguez, Ciro [TX-28] (introduced 5/22/2003), to provide for programs and activities to improve the health of Hispanic individuals, and for other purposes. The legislation would provide states the option of covering legal immigrant children and pregnant women under the Medicaid and SCHIP programs.

http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:h2258ih.txt.pdf

- HR 2330, Rep Lantos, Tom [D-CA-12] (introduced 6/4/2003), to sanction the ruling Burmese military junta, to strengthen Burma's democratic forces and support and recognize the National League of Democracy as the legitimate representative of the Burmese people, and for other purposes. Would authorize the President to deny visas and entry to the former and present leadership of the (Burmese) State Peace and Development Council or the Union Solidarity Development Association.

http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:h2330ih.txt.pdf

- HR 2359, sponsored by Rep Calvert, Ken [CA-44] (introduced 6/5/2003), to extend the basic pilot program for employment eligibility verification [from the Illegal Immigration Reform and Immigrant Responsibility Act of 1996], 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:h2359ih.txt.pdf

- HR 2435, sponsored by Rep Sanchez, Linda T. [D-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

- S. 1159, sponsored by Sen Bingaman, Jeff [D-NM] (introduced 5/23/2003), to provide for programs and activities to improve the health of Hispanic individuals, and for other purposes. The legislation would provide states the option of covering legal immigrant children and pregnant women under the Medicaid and SCHIP programs.

http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:s1159is.txt.pdf

- S. 1163, sponsored by Sen Hutchison, Kay Bailey [D-TX] (introduced 6/2/2003), to condition of receipt certain State revolving funds on the restriction of development or construction of new colonia and colonia structures along the border between the United States and Mexico.

http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:s1163is.txt.pdf

- S. 1182, sponsored by Sen McConnell, Mitch [R-KY] (introduced 6/4/2003), to sanction the ruling Burmese military junta, to strengthen Burma's democratic forces and support and recognize the National League of Democracy as the legitimate representative of the Burmese people, and for other purposes. Similar to HR 2330 above and S. 1215.

http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:s1182is.txt.pdf

- S. 1215, sponsored by Sen McConnell, Mitch [R-KY] (introduced 6/9/2003), to sanction the ruling Burmese military junta, to strengthen Burma's democratic forces and support and recognize the National League of Democracy as the legitimate representative of the Burmese people, and for other purposes. Similar to S. 1182 and HR 2330

http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_bills&docid=f:s1215is.txt.pdf

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

10. Parts Of President's New Racial Profiling Ban Not Applicable In Matters Of National Security

This week, President Bush issued a limited federal ban on the use of racial profiling on the part of federal agents. The federal ban adopts a stricter standard on profiling in traditional and routine law enforcement investigations but allows a looser standard on profiling in national security cases.

In traditional law enforcement investigations, the federal ban bars federal agents from using race or ethnicity to target specific neighborhoods or groups of people, even in cases where the profiling would be permitted by the Constitution. Federal agents may only rely on racial descriptions in cases where the description relates to a specific suspect. Only in cases where a victim or witness describes the suspect as being a specific race, ethnicity, or age may the officer use that information to locate the suspect. In these cases, the officer uses specific witness information to locate a suspect, rather than using a generalized assumption. In order to determine the legitimacy of the specific information, the information must be trustworthy, the information must be tied to the particular criminal act, and the information must be relevant to the locality or time frame of the criminal act.

Federal law agents may, however, consider race, ethnicity, and other relevant factors in investigations that involve national security and border integrity, as permitted by the Constitution. The Constitution permits racial profiling only in the most exceptional instances, including cases of national security. The Constitution does place a limit on generalized stereotyping in racial profiling.

The Administration has come under fire for their handling of certain immigrant groups in the war on terror. The profiling ban does not apply in national security cases, where the information or description need not be specific to the crime, location of the crime, or time of the crime. Rather, racial profiling may be used in terrorist identification so long as some information or description is provided. Random stereotyping continues to be prohibited under the Constitution.

11. Court Says US May Withhold Detainee Names

A 2-1 partisan ruling by a panel of the United States Court of Appeals for the District of Columbia Circuit determined that the Justice Department could refuse to release names of the more than 700 people arrested for immigration violations in connection with the Sept. 11 terrorist attacks.

The court accepted the government's contention that the release of the names would help Al Qaeda determine how the nation's antiterrorism campaign was being conducted. This ruling ties in with another string of rulings that uphold the administration's power to respond as they choose to the terrorist attacks.

The two concurring judges were Republican appointments, while the dissenting judge was a Democrat appointment. The majority opinion stated the judiciary always gives deference to executive branch officials in the field of national security, while the

dissenting opinion shows concern for the government's overreaching approach to the antiterrorism campaign.

This decision came only weeks after a report by the Justice Department's Inspector General highlighted all of the "significant problems" in the ways authorities arrested and treated hundreds of illegal immigrants as part of the Sept. 11 investigation. The report asserted that the vast majority of detainees had no connection with the terrorists. However, Judge Sentelle, who wrote the majority opinion, said that declarations by government officials establish "that many of the detainees have links to terrorism."

Also, Attorney General John Ashcroft argued that while he was obliged by the Constitution to disclose the names of anyone arrested and charged with a criminal act, he did not have to do so in the case of those charged with immigration violations. In addition, he argued that to release the names would violate the privacy of those arrested on immigration charges.

Steven Shapiro, the national legal director of the American Civil Liberties Union, one of the plaintiffs, hoped that the released report showed adequate problems and abuse by government officials to allow a decision for the plaintiffs. "Our whole reason for seeking this is because we believe that secrecy invites abuse and we now know that from the report that abuses did take place," said Shapiro.

Kate Martin, the director of the Center for National Security Studies, the lead plaintiff, said the case will be appealed, either to the full District of Columbia Circuit or to the Supreme Court.

12. Former INS Commissioner Warns Of Government Infringement On Liberties, Praises Legacy Of Immigrants

Former INS Commissioner James Ziglar Sr. said the Bush administration's focus on anti-terror might shortchange citizens' rights due to the fact that officials fear being blamed for another major terrorist attack. Ziglar retired on November 30, 2002, after losing support when an INS contractor mailed student-visa approval receipts for two of the September 11 hijackers six months after the attacks.

In a speech given last weekend at the inaugural membership meeting of the American Civil Liberties Union in Washington, D.C., Ziglar criticized the power of the government to intervene in the lives of Americans.

"The overwhelming means that the government has at its disposal today to invade and intimidate suggests to me that we must be even more vigilant in deterring government overreaching," he said.

Ziglar said Americans need to unite in defending liberties against government abuse. He compared himself to Barry Goldwater in his speech, quoting Goldwater's conception of freedom: "[It] depends on effective restraints against the accumulation of power in a single authority."

He argued that those who try to convince the American people to give up some of their liberties in order to ensure national security are "well-meaning, but misguided."

Ziglar said that the FBI should be made into an independent institution, like the CIA, thereby avoiding abuses of power by the Justice Department. He argued that the Department of Justice as a whole needs to be restructured, suggesting the government narrow the "scope of the department's mission to prosecuting crime and protecting the rights and liberties of all Americans."

"Some vintage Americans seem to be ambivalent, or perhaps schizophrenic is a better term, about recently arrived immigrants and immigration in general," he said. "The pessimists among us want to judge all immigrants by the actions of terrorists."

"Immigrants formed this nation out of a desire for independence and freedom; immigrants have built this nation and enriched its culture and strengthened its resolve to remain free; and it will be the immigrant of the future that will renew and refresh that spirit," he said.

Ziglar said he was glad that the government was taking the threat of terrorism seriously and has restructured with the creation of the Department of Homeland Security in order to protect the country.

"However, there are other values that must be protected in our society and other laws must be enforced in order to preserve, protect and defend the Constitution," he said.

13. Government Urges High Court To Take Alien Detention Case

The U.S. Supreme Court will soon consider a plea from the Bush Administration to review a lower court ruling that would force the government to release imprisoned illegal aliens with criminal records whose native countries don't want them back. The case of *Snyder v. Rosales-Garcia* is on the Court's private conference agenda. At the conference, the justices will determine whether to grant review in this case and a dozen others. The issue is a March 5th ruling by the 6th U.S. Circuit Court of Appeals that sided with Mario Rosales- Garcia and Reynero Carballo, Cuban nationals detained in 1980 trying to enter the United States. They had been deemed excludable, but various times they were released on parole. After accumulating criminal records in the U.S., their paroles were revoked and the government sought to deport them. Because Cuba refused to accept them, the Immigration and Naturalization Service detained them indefinitely. Their habeas corpus petitions challenging their imprisonment got a boost in 2001, when the Supreme Court handed down *Zadvydas v. Davis*. The ruling stated that permanent residents aliens who were ordered deported and could not be kept in prison for longer than six months while efforts were made to find a country that would receive them.

14. EOIR Releases Assessment Report On Board Of Immigration Appeals' Streamlining Pilot Project

In December 2001 Arthur Anderson & Company issued a 69-page report written for the Executive Office for Immigration Review (EOIR) entitled Board of Immigration Appeals (BIA) Streamlining Pilot Project Assessment Report. Streamlining permits a

single member of the Board to dispose of certain motions, withdrawals of appeal, summary remands and other procedural issues, without opinion, under certain conditions. The Streamlining appellate review procedure was published as a final rule in the Federal Register in the Fall of 1999. The Arthur Anderson report is an evaluation of Streamlining Phase IV, to review the changes that came as a result of streamlining and to assess the impact on productivity.

In the report, the Streamlining Pilot Project is declared "an unqualified success," a conclusion resulting from a five-step methodology that included both subjective and objective measurements.

"BIA case productivity both in terms of the number of cases completed and the average number of days it takes for a case to be processed from "Intake" to "Completed at BIA" has been significantly improved by Streamlining."

At the same time, the Anderson report says the expedited process has not been negative for appellants.

"The alien has also not been adversely affected by Streamlining. This is evidenced both in the number of adverse decisions rendered and by not falling disproportionately on 'unrepresented' respondents," the report says.

The report said Streamlining was "anticipated to eliminate the remainder of... eligible pending cases within 20 months," but that the program would remain viable past that period and could be "sustained based solely upon the incoming stream of cases."

In Fiscal Year 2001, the Board completed 35% of its cases by Streamlining, and the report estimated that the streamlining process could complete 825 eligible cases per month plus others, should the statutes and regulations governing the case law change or expand.

Critics of streamlining point out, however, that the quality of the adjudications should be the measure of success and not the quantity. Most decisions are being issued with virtually no consideration and with little information about the basis for the decision. Such critics question whether there is any meaningful appeals process left.

The full report is online at

<http://www.lexisnexis.com/practicearea/immigration/pdfs/web419.pdf>.