

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:

I hope all of you take the opportunity to read Gary Endelman's thought-provoking
commentary this week regarding the coming debate on the H-1B visa in Congress.
One of the more important points addressed by Gary is whether the basic

assumption that the H-1B cap protects American jobs is flawed. There is growing evidence that employers will simply move jobs overseas if they cannot find the right workers in the US. And when an employer moves its operations overseas, so go the existing jobs already filled by American workers. Gary outlines how this process is already accelerating and why countries like India may secretly hope that the H-1B cap is lowered. The more American companies move their best jobs overseas, the more quickly countries like India can catch up, and eventually surpass, the US. The ability to hire H-1B workers gives American companies a reason to stay.

This week we also report on one of the most shocking examples to date of the horrors of the alien smuggling trade. 19 undocumented individuals from Mexico and Central America died from the heat when they were crammed into the back of a tractor trailer and abandoned in desert heat in Texas. Another sad story this week is China's shutting down of its adoption program because of the SARS crisis. More than 5,000 American families adopt unwanted children each year from China and the heartbreak being felt by families in the middle of the adoption process right now must be devastating.

This week you will also find in our ABC's of Immigration column part 1 of a document I frequently present at seminars and conferences which provides a nutshell of the US immigration system. The article's goal is to give a very quick overview of the basic visa categories available for people seeking to come to the US temporarily or permanently. We hope you find it useful.

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 – Foundations Of US Immigration Law

This week you'll find part one of a two part article. The two articles provide a VERY quick overview of the ways a person can legally come to the US. More in depth discussions of each of these topics can be found in our site's ABCs section at www.visalaw.com/abcs.html.

OVERVIEW OF THE US IMMIGRATION SYSTEM

There are Five Major Status Categories

1. Non-Immigrant Visas – temporary visitors (work, student, visitor, etc.)
2. Immigrant Visas – lawful permanent residents (green card holders)
3. Asylees – Asylum and refugee status holders
4. Citizens
5. Undocumented – illegal immigrants

NON-IMMIGRANT VISAS

H-1B Visas – Available to people in “specialty occupations”

1. Do you have a university degree?
2. Do most people in your field in the US have university degrees?
3. If you lack a degree, do you have several years of work experience in your field?
4. Do you have an employer in the US willing to hire you?
5. Does the job pay as much as similarly employed American workers?
Does the employer typically only hire people with university degrees for the job?
6. Does the employer guarantee that they will have continuous work available to you?

General Notes: Valid for up to six years; can simultaneously have green card application pending; spouses and children not allowed to work; do not need to maintain ties to your home country; limited to 115,000 people per year; can change employers quickly, but need new visa approval for each new employer; self-employment permitted in limited circumstances; if applicant lacks appropriate degree, equivalent work experience must be demonstrated and evaluation from expert obtained; companies employing many H-1B workers may be subject to additional requirements; INS must approve before consulate can issue visa.

B-1/B-2 Visas – Available to Short term visitors for pleasure or business

1. Do you have a job that pays well and which you can leave for a few weeks on a vacation?
2. Do you have close relatives who will be remaining in your home country when you come to the US?
3. Are you coming for a short visit?
4. Do you have assets in your home country?
5. Do you own property in your home country?
6. Do you have a set itinerary for your trip to the US?
7. Do you have a roundtrip plane ticket?
8. Do you have close community ties in your home country?
9. Do you have money or proof of support from friends or relatives in the US to show adequate financial arrangements to carry out purpose of trip?
10. If you are coming for business, is the work you are doing work that would typically be done by an American worker?
11. If you are coming for business, is the main place where profits are earned outside the US?
12. If you are coming to the US on business, is your payment going to be made abroad rather than in the US?
13. If you are coming as a B-2 visitor for pleasure, are you coming for one of the following purposes?:
 - a. Tourist
 - b. Social visits to friends/relatives
 - c. Health purposes
 - d. Participants in conventions of social organizations
 - e. Participants in amateur musical, sports or similar events with no pay
 - f. Spouses and children of people in the US armed forces

- g. People accompanying B-1 business visitors
 - h. Coming to marry a US citizen but the person plans on departing after the wedding
 - i. Coming to marry someone on a non-immigrant visa
 - j. Non-spouse partners (regardless of gender) that accompanies an E, H or L visa holder
 - k. Parent seeking to accompany an F-1 student visa holder
 - l. Language students in course of short duration when the course of study is under 18 hours per week
14. If you are coming on a B-1 business visitor visa, are you coming for one of the following purposes?:
- a. Engaging in commercial transactions not involving employment (negotiating contracts, litigation, consulting with clients or business associates)
 - b. Participating in scientific, educational, professional, religious or business conventions
 - c. Religious workers coming to do missionary work in the US, ministers exchanging pulpits but who are paid by their own church abroad, and ministers on evangelical tours
 - d. Domestic servants accompanying returning US citizens temporarily assigned to the US or who permanently reside in a foreign country
 - e. Domestic servants accompanying non-immigrant visa holders if the applicant has worked for the employer for a year or more
 - f. Professional athletes only receiving tournament money
 - g. Foreign medical students seeking to take "elective clerkship" without pay
 - h. Serving on a board of directors of a US company
 - i. Coming to the US to set up a US subsidiary and explore investment opportunities
 - j. Installing equipment as part of a contract
 - k. Participating in a volunteer service program if religious only
 - l. Attending an executive seminar
 - m. Observing the conduct of business

General Notes: Usually can get an authorized stay of up to six months; INS considering limiting initial approval to 30 days; chances improve if a shorter trip is requested; no INS approval required before consulate issues visa; not allowed to work while on a visitor visa.

F-1 Visas – Available to Students

1. Do you have a residence in your home country you don't intend to abandon?
2. Have you been admitted to study full-time in a degree program or an English language program?
3. Is the school where you intend to study approved for students to attend on student visas?
4. Do you have proof of adequate financial resources to attend school full-time without the need to work in the US?
5. If you are not going to the US an English language program, are you proficient in English?
6. Will the education you obtain in the US improve your career prospects in your home country?

General Notes: Must be enrolled full-time; can work on campus up to 20 hours per week; can get up to a year of work authorization upon completion of program; can remain in the US for a period needed to complete the educational program; spouses and children not entitled to work; no INS approval required before consulate can issue visa.

J-1 Visas – Exchange Visitors

1. Are you coming to the US to participate in an exchange program designed by the US State Department?
2. Do you have fluency in English and sufficient funds to live here if the program does not pay J-1 visa holders?
3. If you are looking at the au pair program, have you registered with one of the eight designated au pair programs in the US?
4. If you are a doctor, are you admitted into a medical residency program that will sponsor you for a J-1 visa?
5. If you are coming for a business trainee visa, have you found an employer to provide you with a training opportunity?
6. If you have found a training opportunity, have you found a program sponsor?

General Notes: Available to trainees, professors or research scholars, short term scholars, foreign doctors, camp counselors, au pairs and students in work/travel programs in the US; often requires person to return home for two years before switching to another visa; time limits vary depending on type of program (training – 18 months; scholars – up to three year; au pairs – one year; medical residents – up to seven years; students – up to 36 months); students eligible for up to 18 months of post-graduate work authorization; students must be enrolled full-time; spouses and children entitled to work authorization; no INS approval required before consulate can issue visa.

O Visas – People with extraordinary ability in the sciences, arts, crafts, education, business, athletics or any field of “creative endeavor”

1. Are you one of the top people in your field in your country?
2. Do you have an employer, manager or agent in the US who can sign your application?
3. Is there a peer organization willing to say that they have no objection to your being granted an O-1 visa?
4. Can you show that you have won a major international award OR at least three of the following?:
 - a. Documentation of the alien’s receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
 - b. Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;
 - c. Published material in professional or major trade publications or major media about the alien, relating to the alien’s work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;
 - d. Evidence of the alien’s participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;

- e. Evidence of the alien's original scientific, scholarly or business-related contributions of major significance in the field;
- f. Evidence of the alien's authorship of scholarly articles in the field, in professional journals or other major media;
- g. Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;
- h. Evidence that the alien has commanded and now commands a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

General Notes: Can be admitted for up to three years at a time; no need to maintain residence in Argentina; can have green card application pending while on O-1 status without problems; INS approval required before the consulate can issue visa.

L Visas – Intra-company Transfers

- 1. Are you coming to the US to work for a company that has offices both in the US and outside the US?
- 2. Have you worked for the company abroad full-time for at least one year of the last three?
- 3. Are you coming to the US as an owner, executive, manager or an employee with special knowledge of the company's operations?

General Notes: Seven year stays for owners, executives and managers; five year stay for special knowledge employees; easy to get green card for owners, managers and executives; spouses are allowed to work; INS must approve before consulate can issue visa.

E Visas – E-2 Treaty Investors and E-1 Treaty Traders

- 1. If you are seeking an E-1 Treaty Trader visa, are you currently working for a business that has a substantial volume of trading business with the United States (more than 50%)?
- 2. Are you coming to the US to work as an owner, executive, manager or "essential skills" employee?
- 3. Is at least 50% of the business owned by foreign nationals who are not US citizens or permanent residents?
- 4. For E-2 visas, are you investing a "substantial amount" of money in a commercial investment in the US?

General Notes: No limit on total time in E visa status; spouses can work; no initial INS approval required; permanent residency applications do not adversely affect E visas.

R Visas – Religious Workers

- 1. Are you coming to the US to work as a minister or work in a religious vocation or occupation?
- 2. Have you been a member of the religious denomination for at least two years?
- 3. Is the employer a "nonprofit" organization (most churches, synagogues and mosques qualify as well as institutions affiliated with them)?

General Notes: Valid for up to five years; converts to a green card after two years of work; no INS approval required for consulate to issue visa.

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 - My German wife has a valid green card. We are going back to Germany but have not decided if we will live there or not. If we decide to abandon her green card, how long will we have to wait until we can apply for another one later on? Also, if we abandon her card, will she still be allowed to enter the U.S. on her German passport for the 90 days like she did before?

A - There's no waiting period to reapply for a new green card once you have abandoned one. After it is abandoned, your wife can, in theory, reenter with the Visa Waiver. However, an immigration examiner can always question whether she really has non-immigrant intent and deny her entry.

Q - I lost my green card, in 3 weeks I have to go to Germany, what can I do?

A - If you file an I-90 form at a local BCIS to replace your green card, you can get an I-551 stamp in your passport that can substitute for the green card temporarily. The stamp will normally be provided on the spot.

Q - I was just wondering what the minimum age is to be able to apply for a green card under the eb-1 category.

A - There is no minimum age. Keep in mind, however, that the applicant for an extraordinary ability-based green card (I assume that is the EB-1 category you are about which you are inquiring) must show that he or she is at the top of his or her field. So for a child to qualify, their rise to the top will have had to happen very quickly. In some fields, like sports and the arts, it is not that unusual for young people to stand at the top of their fields. 11 year old New Zealand actress Anna Paquin won the Academy Award in 1993. 17 year old German tennis player Boris Becker won Wimbledon in 1985. Both would easily have qualified for EB-1s.

Q - My sister's had EAD from V2 visa. She is going to be 21 on May 8th. Her EAD expires on May 8th. Her priority date is current and we filed I-485 with i-765 today. Can she work after May 8th even her EAD will be expired?

A - Unfortunately, the EAD does not automatically extend and your sister will not be able to legally work until she gets a new EAD or other work visa.

4. Border News

The Subcommittee on Immigration, Border Security and Claims, House Committee on the Judiciary recently heard testimony from the General Accounting Office on the success of undercover agents attempting to enter the United States with counterfeit documents. A statement by Robert Cramer, the Managing Director of the Office of Special Investigations, reported that OSI agents working undercover were able to enter the United States from various countries in the Western Hemisphere using counterfeit documentation and fictitious identities. Cramer said current law provides an opportunity for individuals to enter the United States illegally.

"Although BCBP inspects millions of people who enter the United States and detects thousands of individuals who attempt to enter illegally each year, the results of our work indicate that BCBP inspectors are not readily capable of detecting counterfeit identification documents. Further, people who enter the United States are not always asked to present identification," Cramer's report said.

The OSI operation was executed at the request of the Senate Finance Committee and was continued at the committee's request.

A Mexico native who was a key figure in the government's case against Tyson Foods has been arrested and is in custody at a Louisiana detention center, awaiting a deportation hearing. Amador Anchondo-Rascon, 43, spent almost two years in jail negotiating a plea bargain in return for cooperation with prosecutors, who were ultimately unsuccessful in the case. Rascon was never called as a witness, and is now subject to a federal law that non-citizens with multiple felony convictions be arrested.

U.S. authorities deported a Saudi consular official living in Southern California on suspicions that he was linked to terrorism. Fahad al Thumairy, 32, was detained at Los Angeles International Airport upon arriving from Frankfurt. Thumairy's diplomatic A-2 visa was revoked on March 21, apparently without his knowledge, and his name was placed on a list of travelers who are not allowed to enter the United States because of suspected links to terrorism. He was deported Thursday, to Riyadh, Saudi Arabia. Riyadh is the location of a recent terrorist attack that killed 8 American citizens. Department of Homeland Security officials said Thumairy may not return to the United States for a period of five years.

Al Thumairy, who had worked at the Saudi consulate in Los Angeles since 1996, was also a Muslim leader and was the imam at the King Fahd Mosque in Culver City, one of the largest Muslim congregations in the region.

5. News From The Courts

United States of America v. Clive A. Dixon
United States Court of Appeals for the Third Circuit

Clive A. Dixon, a Jamaican, appealed a US District Court's conviction of illegal reentry. Under 8 U.S.C. § 1326(a), any alien who has been deported and thereafter "enters, attempts to enter, or is at any time found in the United States," commits a felony. The court held that Dixon could be "found in" the United States for the purposes of § 1326 while involuntarily incarcerated.

In 1991, an immigration judge issued an oral decision granting Dixon voluntary departure status until April 25, 1992, with an alternate order of deportation to Jamaica. The Immigration and Naturalization Service appealed to the Board of Immigration Appeals, challenging the grant of voluntary departure status. Because this appeal acted as an automatic stay, Dixon was not subject to deportation throughout 1992. In 1993, Dixon was convicted of possessing cocaine with intent to distribute, and sentenced to three to six years of imprisonment. The INS withdrew its appeal. When Dixon was paroled, the INS deported Dixon from the United States on March 10, 1998. Dixon then illegally reentered the United States. On December 6, 2000, Dixon was arrested for a traffic violation. The INS charged him with illegal reentry into the United States in violation of 8 U.S.C. §§ 1326(a) and 1326(b)(2).

Dixon filed a motion to dismiss the indictment, claiming that the government must prove that at the time the INS found him, his presence in the United States was voluntary. The district court denied the relief on the motion. Dixon argued that because he was "found in" the United States while he was involuntary incarcerated, he lacked the requisite intent to violate § 1326. The circuit court held that the creative argument lacked merit.

This court explained that it is sufficient for the issue before the court that Dixon undisputedly returned illegally. They held that a violation of the statute only requires an illegal return and a subsequent discovery. They reasoned that though the act of returning to the United States must be voluntary, it is not relevant whether an alien's continued presence in the United States was voluntary at the moment of discovery.

Arriving Alien May Adjust Her Status Under INA § 245i

The Immigration Court in New York held that an arriving alien may adjust their status under INA § 245(i). Section 245(i) provides that any alien who is physically present in the United States and has either entered without inspection or is within one of the classes set forth in section 245(c) of the Act is eligible for adjustment of status if they are the beneficiary of a petition as an immediate relative or an application for labor certification and if the petition was submitted after January 14, 1998, and they were present in the United States on December 21, 2000. The term

"beneficiary" is defined to include a spouse or child of the principal alien who would be eligible to receive a visa under section 203(d) of the Act. See INA § 245(i)(B)(1). In the Matter of: Hui Chen, the court considered whether Chen's status as an "arriving alien" renders her ineligible to adjust status under section 245i of the Act as amended when she otherwise satisfies the statutory requirements.

In January 1992, Chen was paroled into the United States after an immigration officer deferred her inspection. She submitted an application for asylum on or about May 6, 1992. In 1998, at an in absentia hearing, the Immigration Court denied her request for asylum and ordered her removed from the United States to the People's Republic of China. Chen married in September 2000. Her husband was the beneficiary of an approved I-140 Immigrant Petition for Alien Worker. In 2002, INS approved Chen's husband's I-485 Application to Adjust to Permanent Resident Status. In 2001, Chen submitted a motion to reopen the in absentia order to allow her to adjust status to that of lawful permanent resident under 245i. The court granted the motion to reopen.

This court initially held that Chen clearly satisfies the adjustment eligibility requirements of section 245(i) of the Act. The Service argued that according to 8 C.F.R. § 245.1(c)(8), Chen is ineligible for adjustment of status because she is an arriving alien in removal proceedings. "Arriving alien" are: (1) applicants for admission coming or attempting to come into the U.S. at a port-of-entry; (2) aliens seeking transit through the U.S. at a port of entry; and (3) aliens interdicted in international or U.S. waters and brought into the U.S. by any means. See 8 C.F.R. § 1.1(q). If the alien was paroled into the United States, when the parole is terminated upon written notice, the alien is restored to the status that he or she had at the time of parole. See 8 C.F.R. § 212.5(d)(2)(i). Chen's status reverted back to that of arriving alien when the Service issued a Final Denial of Request for Asylum with a Notice to Appear.

The court noted that the remedial purpose of the LIFE Act was to allow previously ineligible applicants for adjustment the ability to adjust status in order to lessen the burden on both the alien and the U.S. embassies and consulates. See 59 Fed Reg. 51091 at 51092 (October 7, 1994); see also, 62 Fed Reg. 39417 (July 23, 1997). The court further noted that according to 8 C.F.R. § 245.1(c)(8), any arriving alien who is in removal proceedings pursuant to 235(b)(1) or section 240 of the Act is ineligible to apply for adjustment of status under section 245 of the Act. The court explained that reading the regulation's limiting provision expansively, so as to preclude applications under section 245(i), as amended by the LIFE Act, "would be contrary to both the express language of the regulation and the remedial purpose[s]" of the LIFE Act. See Matter of Artigas, 23 I&N Dec. 99 at 104.

The court reasoned that aliens like Chen, who have been paroled into the United States, have had their parole revoked and status reverted back to "arriving alien," and who have then become eligible for permanent residence through section 245(i) of the Act, as amended by the LIFE Act, are not among the "certain" arriving aliens intended to be prohibited from section 245 adjustment. The court stated that it is illogical to believe that the Act would allow aliens who have entered illegally and remained unlawfully and aliens who were admitted in transit without a visa and who stayed unlawfully to adjust status, but would not allow Chen, who entered lawfully and remained lawfully for several years.

The court therefore found that "arriving aliens" who have been paroled into the United States, have had their parole revoked and thereby have had their status revert back to "arriving alien," and have then become eligible for permanent residence, are not prohibited from section 245(i) adjustment. In these narrow circumstances, section 245(i), as amended by the LIFE Act, overrides the impediment in 8 C.F.R. § 245.1(c)(8). Additionally, the court concluded that it had jurisdiction to adjudicate an application for adjustment of status made by an arriving alien in removal proceedings pursuant to section 245(i) of the Act. The court ordered that Chen's application for adjustment of status be granted.

6. Government Processing Times

There were no new processing times available this week.

7. News Bytes

The application period for the Legal Immigration Family Equity (LIFE) ACT ends on June 4, 2003. Applications are filed at the Missouri Service Center, through the Chicago P.O. Box. To benefit from the provisions of LIFE Legalization, an alien must properly file an application for adjustment of status, Form I-485, with appropriate fee, before the end of the application period. All applications, whether filed in the United States or filed from abroad, must be postmarked on or before June 4, 2003, to be considered timely filed. If the postmark is illegible or missing, and the application was mailed from within the United States, the Service will consider the application to be timely filed if it is received on or before June 9, 2003.

The LIFE Act was signed into law on December 21, 2000. It made a number of changes to immigration law, including a temporary restoration of section 245(i) of the Immigration and Nationality Act and the creation of the V visa for spouses and minor children of legal permanent residents. The LIFE Act also provided another opportunity for applicants of the 1986 Amnesty to file for their green cards.

The Department of State has amended the restriction on the use of US passports for travel to and from Iraq. Secretary Powell decided to broaden the exemptions to allow for those involved in reconstruction and humanitarian efforts in Iraq. The amendment will expire at midnight on February 25, 2004. With the amendment, passports must be validated by the Secretary of State for anyone not belonging to the following categories: those resident in Iraq since February 1, 1991; reporters and journalists on assignment; those conducting humanitarian activities; contract workers involved in government reconstruction efforts; United Nations personnel; and US government officials, including members of Congress and their staff.

The BCIS has released the second of two memoranda issuing guidance to interim area directors on fingerprinting procedures for the adjudication of the Application for

Advance Processing of Orphan Petition, Form I-600A. The previous memo suggested that offices should schedule PAPs and all qualifying household members for fingerprinting after the home study had been received, but the new memorandum stresses that the guidance was not meant to limit the adjudicating officer's discretion to schedule the fingerprint at the time of filing the I-600A, even without the home study accompanying the submission.

Hundreds of Chinese children on the verge of being adopted by American families are in limbo after Beijing's decision to suspend all foreign adoptions. Citing the dangers posed by an outbreak of the severe acute respiratory syndrome, or SARS, the Chinese Center of Adoption Affairs said it has put a temporary stop on sending documents authorizing parents to come to China. Officials said families who have already been authorized for travel and have made plans would be allowed to pick up the children. About 5,000 Chinese children are adopted by Americans each year. State Department information on Chinese adoption policy, as well as travel warnings, can be accessed online at http://travel.state.gov/adoption_china.html.

An immigration lawyer in Los Angeles has reported that an L.A. Asylum Office spent several minutes asking his client seemingly inappropriate questions during his asylum interview, including how much he paid the attorney to represent him and what the attorney promised to do for him. The Asylum Officer also asked the client how he found the attorney's office. Unable to get the AO to explain the reasoning behind this line of questioning, the attorney then spoke to a supervisor, who also refused to tell him why they were asking such questions. The attorney then terminated the interview, saying the information was not relevant to the asylum claim and the attorney-client relationship was not a valid area of inquiry.

Investigators with the General Accounting Office has said the Justice Department's interviews with 7,600 foreign nationals after the 9-11 terrorist attacks were conducted haphazardly and that the results were inconclusive and incomplete. The GAO said the voluntary interview process was complicated by duplicate names and government systems errors as officials attempted to thwart terrorist activity. The interviews were scheduled with foreign nationals, mostly young men from Middle Eastern countries where Al-Qaida was known to have a presence. Because the Justice Department refused to provide examples of useful leads gathered in the interviews, citing security concerns, and because no analysis has been done on the results, the GAO said it could not measure their success.

The Department Of Homeland Security issued a press release Friday detailing a reorganization plan for the Bureau of Immigration and Customs Enforcement (ICE). The plan creates a headquarters structure for the agency's operations and a field structure with an integrated chain of command designed to streamline operations and cut costs. The DHS said the plan would be made effective on June 9.

ICE is the investigative arm of the DHS, combining the detention, removal and intelligence functions of the former INS with similar functions of the former Customs Service.

The headquarters structure will support five operational divisions of ICE: Investigations, Detention & Removal, Intelligence, Air & Marine Interdiction, and Federal Protective Service. At the field level, a Special Agent in Charge structure following the model of other law enforcement agencies will be put into place. Twenty-five officers will be designated as ICE Interim Special Agents in Charge, each responsible for a geographic area of the U.S. These Special Agents in Charge will be named next week.

The May 16th issue of the Wall Street Journal reported that the US Department of State is planning on requiring all non-immigrant visa applicants be interviewed. Currently, US consulates in many countries with low visa denial rates allow applicants to submit applications by mail, drop box or travel agent without the need to appear for an interview. The report is not being confirmed by the Department of State, but if it is true, it could lead to substantial application delays at consulates around the world.

Department of Labor counsel Harry Sheinfeld has advised the American Immigration Lawyers Association that the expected June release of the PERM labor certification regulation has now been delayed until September and that the PERM electronic filing system will not be in place until early next year.

8. International Roundup

In the Dominican Republic, thousands of work permit applications submitted by people hoping to work in Spain were discovered in garbage bins, but upon investigation most were found to have already been processed. Still, 50 of the 12,000 applications were unprocessed. Labor Minister Milton Guevara said investigations would continue.

The government of Japan has submitted a bill to amend the Immigration Control and Refugee Recognition Act to abolish the 60-day rule, which effectively voids refugee applications filed by anyone who has been in the country longer than two months. The proposal, if passed, would grant temporary residency permission to refugee applicants meeting certain criteria, including entering Japan directly from their home country and applying for refugee status within six months after arrival. Applicants would also be screened for flight risk and criminal history. Japan hopes to shake its reputation of having a closed door refugees policy. In the last thirteen years, Japan granted refugee status to fewer than 100 people. Members of the Democratic opposition party are critical of the government's plan, saying the system would still be far behind other nations, that it would impose strict restrictions on applicants and that the Justice Ministry's ad hoc methods would remain hidden from public view.

Critics also say that the direct entry rule is problematic, given that all of the Afghan asylum seekers in Japan entered Pakistan or another neighboring country first, as they urgently fled their war-ravaged homeland.

A judge in Zimbabwe stopped police from deporting a veteran U.S. reporter accused of criticizing the government. High Court Judge Charles Hungwe ordered immigration officials to bring the journalist in for a hearing, saying there was no reason for him to be detained. Andrew Meldrum, 51, is a correspondent for London's Guardian newspaper and has worked in Zimbabwe for 23 years. Meldrum already had a pending Supreme Court appeal of a previous deportation order when Home Affairs Minister Kembo Mahadi issued a second deportation order last week. Meldrum was told to report only on economic and cultural issues.

Police in Peshawar, Pakistan, raided the office of a travel agent and seized dozens of stolen passports and fake visa stamps. A travel agency employee was arrested under suspicion that he supplied fake passports and other travel documents to members of al-Qaida. U.S. intelligence officials aided in the operation.

The High Court of New Zealand has declared that a change to immigration rules made last November, which imposed tough new English language tests retrospectively on immigrants, is invalid. However, the tests will still apply to future migrants. Immigration Minister Lianne Dalziel said the Crown would consider appealing the ruling.

9. Legislative Update

There was no significant legislative action related to immigration in Congress this week.

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

10. Guest Article - The Perils Of Pragmatism: Outsourcing, Not The Cap, Is What America Should Fear

Gary Endelman practices immigration law at BP America Inc. The opinions expressed in this column are purely personal and do not represent the views or beliefs of BP America Inc. in any way. This article is copyrighted by, and reproduced with permission from, www.ilw.com.

Announcing the obvious with an air of discovery, the 195,000 H-1B annual cap will not be renewed for Fiscal Year 2004. Supporters acknowledge that a return to the pre-1998 65,000 cap lies within the realm of political possibility. It gets worse. Even a sharply reduced cap could be saddled with new and potentially crippling restrictions. Representative James Sensenbrenner Jr., (R-WI), Chair of the House Judiciary Committee that is the gatekeeper for immigration legislation, told members of an Indian business group earlier this year that the H-1B visa program will be "tightened" according to reports in Indian newspapers.

The reasons for such pessimism are not hard to find. Last month, unemployment rose to an eight-year high of 6% and may go higher still. Two million American workers have lost their job since 2001. According to the U.S. Bureau of Labor Statistics, unemployment among American-born electrical engineers has soared to 7% and among computer hardware engineers to 6.5%. According to the Institute of Electrical and Electronics Engineers, not exactly an impartial observer, in the past two years alone, this translates into a disappearance of 241,000 electrical engineering and 175,000 computer-related jobs respectively. In March, the Dow Jones Industrial Average stood at 8200, down almost 300 points from its close the same week in 2000. Looking for a convenient scapegoat, opponents have seized on the H-1B as the most obvious reason for the nation's economic woes with an almost fiendish delight.

The charge that corporate employers import skilled labor from foreign countries to displace US citizens is not a new one; indeed, it pre-dates the H-1B and is as old as immigration itself. Hard times have given these old accusations new life, making them infinitely more threatening and more believable. It is not only that critics claim H-1B aliens work longer hours for lower wages that makes the visa such an inviting target. There is a larger cultural reason as well. Notwithstanding the greater H-1B mobility made possible by the American Competitiveness in the 21st Century Act, restrictionists eagerly point to the continued difficulty that H-1B workers have in changing jobs. "This system is an affront to free enterprise," Phyliss Schalfly thundered recently, "because the regulations confine the foreigners to their sponsoring corporations like indentured servants."

Members of Congress now clearly think that voting to lower the H-1B ceiling will stem the flow of jobs out of their districts. Recently, for example, U.S. Representative Nancy Johnson, a pro-business Republican from Hartford, Connecticut, sent letters to the chief executives of five Connecticut insurance companies asking how many Indians they now employ on H-1B visas and how many American IT workers they had laid off during the past two years. Johnson said she also wanted to know about the outsourcing of IT jobs to India. The law may make a distinction between dependent and non-dependent H-1B employers but most legislators do not. They think that the H-1B is to be used only when there is a shortage of US workers with the needed skills. The fact that most H-1B employers have to make no such showing would come as a rude and most unwelcome surprise on Capitol Hill. Nor is this a particularly American phenomenon. Australian newspapers and union officials recently accused telecommunications giant Telstra of contracting with two of India's biggest outsourcing companies, Infosys and Satyam, to replace Australian IT specialists earning \$60,000 with Indian recruits making as little as \$12,000 for the same job. Moreover, it is not just the H-1B that stands accused of stealing American jobs. Skeptics are clearly predisposed to believe that clever multinationals are trying to get around H-1B restrictions through using the L-1 intracompany transferee visa as a way to divert American jobs through outsourcing

to Indian IT wage slaves. Recently, 20 US computer workers at the Florida office of Siemens ICN pointed an accusing finger at L-1 Indian replacements when they were given the pink slip.

Friends of the H-1B must confront the unpleasant reality that, while Congress is going to recast the H-1B based on gloomy financial news, numerous economic metrics show that the economy is finally beginning to turn around. That is, of course, easy to say for those that still have jobs, but it remains nonetheless true. Consider the following:

1. The Federal Reserve Bank of Dallas reported last December that business productivity grew faster in 2002 than it had for the past half-century;
2. After two years of consecutive cuts, corporate spending on new structures, equipment and software has finally begun to rise;
3. Corporate earnings in the first quarter of 2003 were up some 9% from a year earlier and this was on top of a strong 2002 profit showing;
4. Wall Street economist David Malpass of the Bear Sterns investment house reminded a House financial services panel last week that domestic employment, despite recent job losses, was still 1.5 million above the 1999 average. With a workforce in excess of 130 million, he testified, the number of workers receiving unemployment compensation remained a relatively low percentage of total jobs when compared with past business cycles;
5. Corporate earnings have benefited from the decline of the dollar relative to the euro and other major currencies. This increased the cash flow from the overseas operations of US companies as they converted their earnings from these other currencies into cheaper dollars;
6. The fall in oil prices as a result of the ability of coalition forces to prevent the destruction of Iraqi oil fields is, in effect, a tax break for the entire US economy;
7. Wall Street Journal columnist George Melloan this past week observed that "low interest rates are holding down the borrowing costs of both consumers and businesses, helping to spur faster economic growth" and he predicted that the rate of revival this year might "exceed last year's rate of 2.9% by a significant margin." Mr. Melloan also noted that Americans' personal income for March 2003 hit \$9.16 trillion, a record level. UBS reported that its April survey revealed the sharpest one-month rise in investor confidence in survey history;
8. The US economy began 2003 with 10.3 million IT workers, up 4.2% from the start of 2002 . In fact, when comparing quarter to quarter, the economy actually added 86,406 IT jobs according to the 2003 IT Workforce Survey presented by the Information Technology Association of America at The National IT Workforce Convocation on May 5, 2003. Tech support personnel hiring rose the most, 8.8%. The ITAA called this " a hopeful sign, indicating that organizations may be adding the type of professionals needed to support new business initiatives and help firms implement and capitalize on new IT

solutions." Notwithstanding the undeniable pain in the IT industry, the worst of the downsizing may, at long last, be over. The IT workforce appears to be stabilizing as the rate of reduction in staff by IT companies dropped almost 50%;

Beyond all of this, the most important truth is that the extent to which IT jobs are leaving the US has little, if anything, to do with whether the H-1B cap rises or falls. Keeping the cap high will not cause jobs to leave and slashing it will not keep them home. Employers will make these decisions for entirely different reasons. Noted immigration lawyer Cyrus Mehta got it right when he examined the interplay between the H-1B visa and today's economic downturn:

Linking the H-1B visa program to a quota makes little sense. Whether the number is 65,000 or 195,000, neither have any bearing to the economic reality. Immigration policy should allow market conditions to regulate the number of H-1B workers...

The ITAA survey offers several insights into why US companies may decide to move IT jobs elsewhere. Looking to cut costs is one, but not the only, or even the predominant, reason. Others include the need for product or service localization and the ability to add on a second or third shift as a strategy to penetrate new international markets. While politicians are falling all over themselves to attack the H-1B as root cause of IT unemployment, the ITAA survey found that more than low-end jobs were going off-shore. In fact, programming/software engineering was the job category most likely to leave the US (67%), followed by network design (37%) and web development (30%). No longer do US IT employers have to choose between overhead and excellence; now, the ITAA survey shows, they can have both:

As foreign countries nurture ever more sophisticated IT workforce populations, the traditional tradeoff between cost and quality begins to disappear. As a result, offshore development becomes more of an option to more employers for more types of IT work...large IT companies are the respondent group most likely to have made this move. Twenty-two per cent of respondents in this category say they have moved work offshore-three times as many as large non-IT firms.

It is not surprising that ITAA president Harris Miller recently promised to "closely monitor increased offshore activity to see its impact on US IT workers. This new phenomenon," he told reporter Roy Mark of the Internet publication CyberAtlas, "as a factor of cost and the relative portability of IT products, and the increased usage of broadband connections worldwide." Precisely because the movement of IT jobs has nothing to do with the H-1B cap, Harris Miller, long condemned by H-1B foes as the prince of darkness, has expressed little concern about, or enthusiasm for, saving the 195,000 H-1B cap. As reported by eWeek on May 2, 2003, Mr. Miller said that the ITAA was "just going to see the way things go," rather than push all out to keep the H-1B quota at its current elevated level. In the opinion of eWeek reporter Lisa Vaas, offshore outsourcing "has also contributed to the ITAA's disinterest when it comes to lobbying for a higher ceiling." Harris Miller put the whole issue of the H-1B cap in its proper perspective, and ironically underscored how difficult it is going to be to mount an emergency campaign this coming fall to save it, when he told eWeek that "Offshore is the problem, not H-1Bs."

The insistence by the USDOL that H-1B wages must be defined solely in a domestic context without reference to the reality of a global economy has, if anything, accelerated the flight of IT jobs out of the US to the detriment of the very American workers whose legitimate interests DOL is trying so hard to preserve and protect. The real threat to the American IT worker is not the H-1B replacement, upsetting though this is on an anecdotal basis, but the IT worker in India who never comes to the US. The greater the difference in wages between the web designer in San Jose and Bangalore, the more pressure that IT firm in Silicon Valley will be under to shift the work overseas so that its cost structure and profit margins can remain competitive. By seeking to make it more difficult for this Indian software designer to work in this country, critics of the H-1B are unwittingly promoting the development of the Indian computer industry. They are making it easier for this industry to achieve the necessary critical mass that will enable it to function on a consistent and long-term basis as a viable strategic alternative to Silicon Valley in the most profitable and cutting-edge technologies. When this happens, the true irrelevance of the H-1B cap will become utterly transparent. H-1Bs will no longer be sought after because the jobs will no longer be here.

The threat is not an idle one. Delta Air Lines has contracted two Indian companies to handle some of its customer reservations, the first US carrier to make such an arrangement. J.P. Morgan Chase & Company is setting up an equity research department in Bombay. Outsource Partners International, a New York-based tax preparer, had about 10,000 returns done in Bangalore this past tax year. American Express has opened its own processing center in India. A study by Forrester Research of Cambridge, Massachusetts estimated that IT outsourcing could send 3.3 million American jobs overseas by 2015. Where are they going? New York Times reporter Amy Waldman knows: "India, with its large pool of English-speakers and more than two million college graduates every year, is expected to get 70% of them." Well then, you say, crack down on the H-1B flood to prevent this from happening! Really? That is precisely what India hopes will happen: "In the face of rising unemployment in the West," observes Ms. Waldman in her bylined article entitled "More 'Can I Help You?' Jobs Migrate from U.S. to India," that appeared in this Sunday's New York Times, "resistance has grown to importing high-tech professionals from India. In the short term, that may actually prompt moving more work to India to reduce public resentment." Dr. Jagdish Bhagwati, a professor of economics and political science at Columbia University, predicts that, over time, "visa restrictions may actually loosen as countries decide it is preferable to have foreigners come in to work rather than see jobs migrate abroad."

The same argument is equally compelling when applied to ardent defenders of the H1B who insist that nothing about it can be changed. These stalwarts must demonstrate how the H may be used to create new jobs and prevent current ones from leaving this country. Even if the H-1B ceiling stays in the stratosphere, or is even raised to more Olympian heights, if the jobs leave the US, who is helped? How many immigration lawyers will be needed to file H-1B petitions for jobs that have already left? What happened to the steel and shipping industries will happen in the IT industry with devastating consequences for our national security and global economic leadership. We will lose control over those technologies that will determine the future. By contrast, the H-1B should be thought of in a fundamentally new and different way, so that US workers have a stake in its success, and the level of support for H-1B migration will be so universal as to make possible H-1B levels that we can not now even dream about. It is precisely when our fears are highest and our economy seems most vulnerable, that more, not less, H-1Bs are needed to inject

talent and raise productivity. It is only through such a surge in productivity that the centrifugal pressures of outsourcing can be successfully resisted.

How can this Nirvana come about in such perilous times? Only through a radical simplification of the H1B system that will be extremely painful to achieve. The amount of red tape and dollars involved in sponsoring an H-1B worker is insane but not particularly surprising given who is making up the rules. This is what happens when Congress senses there is a problem, but can't really figure out how to correct it because they get absolutely no help from either the regulators or the regulated. Legitimate users of the H-1B program must acknowledge its underlying flaws and try to be a part of the solution, rather than blindly defending all aspects of it. Honest opponents must recognize that the H-1B is essential for US companies to be diverse, seamless and productive in a global economy where wage pressures operate in a transnational context. The solution is to recognize that the H-1B does not belong to highly organized advocacy groups, whether they represent corporate employers, the immigration bar, or big labor. If the H-1B is to fulfill its potential as an engine of job creation, it must also belong to small business, all American workers and the H-1B beneficiaries themselves.

The only way this can happen is for the Congress to mandate an honest and sustained exercise in negotiated rulemaking, much as has already produced solid benefits in environmental compliance and workplace safety. Such negotiated rulemaking would provide a way to give Congress honest and constructive input as to what kind of regulations would really benefit both H-1B users and the American worker. Any attempt to initiate such a radical approach would almost certainly incite fierce opposition from those lobbyists and bureaucrats who feel most threatened by it. Some DOL regulators and some pro-H1B advocates fear negotiated rulemaking and the simplification that can come from it because, at bottom, they have little confidence in their own relevance, and little faith in the American economy and the contribution that immigration makes to it. For these reasons, defenders of the H-1B status quo on both sides view complexity and stalemate as necessary for their own self-preservation and institutional relevance.

The details of negotiated rulemaking are best left to Congress to decide. It is sufficient now to articulate in broadbrush strokes those general principles that should inform such an exercise. Try these on for size:

1. Eliminate costly red tape and lengthy processing delays that stifle progress.
2. Crack down on the use of the H-1B to hire cheap foreign labor whenever and wherever it occurs.
3. Give the H-1B workers themselves ownership of the visa so that they can vote with their feet to look for greener pastures elsewhere when they perceive themselves to be the victims of mistreatment.
4. Eliminate the labor condition application that will become obsolete once the H-1B becomes truly mobile and imbued with the spirit of capitalism.
5. Scrap the notion of the H-1B cap and limit the H to a limited period of validity without any extension.

6. Judge H-1B employers and beneficiaries by a points system that evaluates two things: First, whether the employer is acting in a way to help US workers. This could be hiring Americans; adopting profit-sharing plans; increasing internal opportunities for job training; improving industrial safety or being a better corporate citizen in the community. Other examples of positive behavior will doubtless present themselves. Second, whether the H-1B beneficiary has the skills and character traits to help create new jobs, promote profitability, and maximize economic opportunity. This could involve language fluency, education, specialized knowledge in cutting-edge technology, and familiarity with the customs and practice of both domestic and international commerce.
7. Eliminate the ability of job shops to use the H-1B visa either through outright prohibition or the imposition of negative points. Lock the bad guys out of the system so that the honest users can benefit. This will require major multinationals to institute vigorous recruitment campaigns overseas but this is a small price to pay for cleansing a process that is so manifestly in need of it.
8. Link the H-1B visa to occupational rates of domestic unemployment when adjusted for regional variances, while allowing US employers to demonstrate the ability to pierce such a cap by demonstrating how the approval of the H-1B petition will alleviate such unemployment in the area of intended employment.

Those who have most to lose by fundamental change will argue that, however interesting any or all of the above may be, it is politically impractical. They will talk sagely about what is politically possible and the hard realities of Capitol Hill politics. They will consult with coalition partners and carefully craft position statements. All of this is not to be dismissed; indeed, rhetoric is not reality and sentiment is rarely a substitute for what works. Organized lobbyists are the necessary lubricant of democratic persuasion when their expert efforts serve a larger national purpose. We have come to a point in our national conversation on the H-1B when this may no longer be the case. In 1998, in far more bountiful economic times, the organized representatives of the business community and the immigration bar made a fateful choice to defer a serious push for expansion of the immigrant visa quotas in exchange for a temporary increase in H-1B numbers. Then, as now, talk of root and branch reform was shrugged off by those in the know as interesting but unrealistic. This cautious approach produced the inaptly named American Competitiveness Workforce Improvement Act. ACWIA did allow greater H-1B migration for a time but introduced several corrosive features into our H-1B jurisprudence, such as the training fee and the very notion of H-1B dependence. The damage done to the H-1B by this Faustian bargain will neither soon nor easily fade away. Now, precisely because the situation is so dire, the friends of the H-1B have been given a second chance to do the right thing. This time, let's avoid the perils of pragmatism and save the H-1B by redefining what is possible. Now, more than ever, we need to swing for the fences.

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

Family Numbers

	All Chargeability Areas Except Those Listed	MEXICO	PHILIPPINES
1st	01NOV99	01MAY94	01JUN90
2A*	15APR98	01NOV95	15APR98
2B	22OCT94	15NOV91	22OCT94
3rd	15MAR97	15NOV93	15JAN90
4th	08JUL91	08JUL91	15JAN82

*NOTE: For **June**, 2A numbers EXEMPT from per-country limit are available to applicants from all countries with priority dates earlier than **01NOV95**. 2A numbers SUBJECT to per-country limit are available to applicants chargeable to all countries EXCEPT MEXICO with priority dates beginning **01NOV95** and earlier than **15APR98**. (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 **June**, 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 26,000
Asia	AS 16,450
Europe	EU 33,000
North America (Bahamas)	NA 15
Oceania	OC 530
South America (Caribbean)	SA 1,600

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

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 36,000
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 is likely to require the oversubscription of this chargeability for July. (Visa Bulletin no. 54, alerted readers that oversubscription of the chargeability was possible.) Therefore, it will be necessary to establish a cut-off date in the F4

category, which is earlier than that of the Worldwide date. This action will be required to hold visa issuance within the annual numerical limits. This oversubscription will have no impact on visa availability in the India Employment categories, which will remain "Current".

E. POTENTIAL RETROGRESSION OF PHILIPPINES CUT-OFF DATES DURING THE COMING MONTHS

PHILIPPINES: The PHILIPPINES Family First (F1), Third (F3) and Fourth (F4) preference cut-off dates have moved forward very quickly during the past year. This has resulted in a significant increase in number use, and could require the retrogression of these cut-off dates as early as July.

12. Canadian Corner

New Citizenship Provisions
Quebec Immigrant Investor Program

The Minister of Citizenship & Immigration announced new measures for dealing with the resumption of citizenship for people who lost their status as minors.

The new measures will apply to people who lost their Citizenship as children between January 1, 1947 and February 14, 1977, when their parent ceased to be a Canadian by becoming a citizen of another country.

If you have any questions about Canadian Immigration laws please contact Leonard Pearl at our Canadian office (lpearlvisalaw@sprint.ca or 905-764-8767).

13. 18 Immigrants Found Dead In Truck, Driver Could Face Death Penalty

The driver of a truck in which 18 immigrants were found dead was charged in a federal court Thursday with transporting and harboring aliens. Tyrone Williams of Schenectady, N.Y., was also charged with conspiracy to transport and harbor aliens. Two others believed to be accomplices, a man and a woman, are being sought. Officials said those responsible for the deaths would be prosecuted to the fullest extent of the law. Under a 1996 law that toughened the penalties for smuggling illegal immigrants, resulting in their death, the defendants in this case could be sentenced to capital punishment.

The immigrants were locked inside the back of a semi trailer and died of suffocation and heat exhaustion as they tried desperately to free themselves. One of them used a cellular phone to dial 9-1-1, but police lost the call before the dispatcher was able to find someone who could translate Spanish. Another attempted to attract attention by waving a bandanna out of a hole in the trailer's back door. The vehicle eventually arrived at a truck stop near Victoria, Texas, where the smugglers apparently unhitched the trailer.

An hour or two later, authorities received a call alerting them to a disturbance there. When officers reached the trailer, four bodies were on the ground and 13 others were dead inside. A five or six-year-old boy was among the dead. Another died at a hospital a few hours later.

Thirty-nine survived the ordeal. Authorities said the immigrants were from Mexico, El Salvador, Guatemala and Honduras. Survivors told U.S. custody officials that smugglers had loaded them aboard the trailer Tuesday in Harlingen, Texas. According to a report by the Associated Press, the trailer had been air conditioned while it was being pulled, but when the driver abandoned them, the container became airless and extremely hot inside.

Victoria County District Attorney M.P. Eaves said, "We want to get every bit of justice for these guys. I want this insurance for these 18 people -- that they did not die in vain. I want an accounting."

In an interview with the Houston Chronicle, Williams' wife Karen said he told her his trailer had been hijacked and that he released it and ran for his own safety.

14. ICE Releases Most Wanted Fugitive Criminal Aliens List

On Wednesday, the Bureau of Immigration and Customs Enforcement (ICE) released a list of its "Most Wanted Fugitive Criminal Aliens" who are wanted for administrative orders of removal from the United States. The list includes foreign nationals convicted of committing serious crimes in the US and who have been ordered deported but remain at large. Four of them are convicted child molesters, three are convicted rapists, two have been convicted of manslaughter and one was found guilty of drug charges.

By the end of the week, officials announced they had located two men on the list who were hiding to avoid a deportation order. Albert Vinicio Torres, a 41-year-old Ecuadorean, convicted of a lewd act with a child, was arrested Wednesday and is being held at a detention facility pending deportation. Officials also arrested Mexico native Esteban Grajiola-Mora, also convicted of a lewd act with a child. He has already been returned to Mexico.

Acting Assistant Secretary Michael J. Garcia said a dozen other names were originally scheduled to be included on the list but were arrested by ICE agents and have been deported.

The Most Wanted list is part of a BICE strategy known as the National Fugitive Operations Initiative, created in order to reduce the number of absconders who have failed to comply with an immigration judge's deportation order. Garcia said ICE would use \$10 million in congressional funding to set up eight teams of agents working under the Initiative to apprehend and deport aliens convicted of crimes. There are 300,000 aliens facing deportation orders currently in the United States, and 80,000 of those have been convicted of a crime. ICE deported 36,000 criminal aliens in the first six months of this fiscal year.

The Most Wanted list is linked from the ICE website and can be viewed in pdf format at <http://www.bice.immigration.gov/graphics/detention/mostwanted.pdf>