

Siskind's Immigration Bulletin  
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Siskind Susser serves immigration clients throughout the world from its offices in the US, Canada, Mexico, Argentina 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 Siskind. Associate Editor: Esther Schachter. Contributors: Arda Beskardes, Paola Palazzolo, Maryam Tanhaee and Megan Turngren.

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1. Openers

Dear Readers:

I am writing this week's Openers from Philadelphia, Pennsylvania. I'm here attending the first conference sponsored by the Association of Nurse Executives specifically covering the subject of foreign health care workers. The conference is timely because the nation's health care worker shortage is growing and all signs point to a severe widening of the shortage over the next decade. The program provided nearly 200 attendees with information on US immigration rules, information on the variety of business issues that come up when recruiting foreign health care workers and information on how best to integrate the workers into the general work force.

I had the opportunity to see many of our clients in person as well as to see several fellow lawyers who work on health care immigration matters and who we work with from time to time on projects of interest to our collective base of clients. In about a week and a half, we'll be posting our latest health care immigration newsletter and we'll describe some of the more interesting information we learned at the meeting.

The Wal-Mart raids are in the news this week again with the news that the government is targeting the company for using contractors to supply cleaning workers that Wal-Mart should have known were out of status. The government's theory is aggressive to say the least. According to the theory, Wal-Mart had to know that the contractors were hiring undocumented workers because its stores were raided twice in the past. The trouble with this argument is that Wal-Mart is a company that is massive - its revenues are more than many countries and it accounts for as much as 30% of the sales of some many of the leading manufacturing companies in this country. There are thousands of Wal-Mart stores in this country employing about a million people. Wal-Mart has contracts with employers of all sizes all over the US. So it is a bit simplistic to say Wal-Mart had to know. That's just not reality when you are talking about a company this big.

Nevertheless, the raids should provide a wake up call to employers around America. If Wal-Mart is vulnerable, every company is vulnerable. Smart employers will want to be pro-active in reviewing their I\_9 policies to be sure that they are not potentially liable for hiring undocumented workers or failing to comply with recordkeeping requirements. Contracts with employers should be reviewed to make sure that immigration issues are addressed and background checks on contractors should regularly be conducted to make sure that they have clean immigration records. HR departments should receive regular training in immigration law compliance as well. Your immigration lawyer should be able to provide these services.

Two other stories we report on this week involve declines - declines in the number of foreign students admitted to the US and declines in refugee admissions. Both drops can directly be attributed to the 9/11 attacks and both stories should concern folks interested in America's image in the world. Millions of students from around the world have studied in this country over the last several years. Most have gone home and have helped to shape the positive views that much of the world still has of this country. Many students have gone on to become leaders of their countries and their positive experiences in America provide important intangible benefits to the US in shaping our foreign policy.

As for refugee admissions, the Bush Administration will keep the set level of refugee admissions the same as last year. The catch is that the Department of Homeland Security has not been using up the refugee slots called for by President Bush. In fact, only about a third of the refugee slots got filled last year even though the demand is stronger than ever. There is much finger-pointing going on as far as why

DHS is not doing its job and processing these cases. But none of the excuses justifies defying the President either intentionally or simply as a matter of not committing the resources to process the cases. We urge readers to contact their Congressional representatives to push them to in turn push the Department of Homeland Security to do their jobs and process the cases budgeted for by President Bush.

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

Regards,

Greg Siskind

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## 2. The ABC's Of Immigration – The DV-2005 Green Card Lottery

### **What is the "Green Card" Lottery?**

The U.S. Congress has authorized the allotment of 50,000 immigrant visas in the DV-2005 category during Fiscal Year 2005 (which runs from October 1, 2004 to September 30, 2005). Foreign nationals who are natives of countries determined by USCIS (according to a mathematical formula based upon population totals and totals of specified immigrant admissions for a 5-year period) are eligible to apply. The application period began on **Saturday, November 1, 2003** and ends on **Tuesday, December 30, 2003**.

For the first time, entries this year are submitted electronically. Applicants can submit their applications at [www.dvlottery.state.gov](http://www.dvlottery.state.gov). **Paper entries are no longer accepted.** Applicants can submit their forms themselves or they have a representative such as a lawyer submit the application on their behalf.

### **Which countries are excluded from the lottery?**

The following countries are excluded: Canada, China - mainland China (nationals of Hong Kong, Macau and Taiwan, ARE included), Colombia, Dominican Republic, El Salvador, Haiti, India, Jamaica, Mexico, Pakistan, Philippines, Russia, South Korea, United Kingdom (natives of Northern Ireland and Hong Kong are eligible, but natives of Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, St. Helena, and the Turks and Caicos Islands are not eligible), Vietnam.

### **Why was my country excluded?**

The DV lottery is designed to increase the diversity of the overall pool of immigrants coming to the US. Countries that are proportionately over-represented in the immigrant population are excluded. Countries that have sent more than 50,000 immigrants to the US in the past five years are put on to the list above.

### **How are visas allotted?**

The DV-2005 program apportions visa issuance among six geographic regions (Africa, Asia, Europe, North America (other than Mexico), Oceania, and South America (including Mexico, Central America and the Caribbean). The world is

divided up into high and low admission regions and each of the six regions is divided into high and low admission states. A greater portion of the visas goes to the low admission regions than to high admissions regions. High admission states are entirely excluded from the lottery (those states are listed above) and low admission states compete equally with other low admission states in the same region. No single state may receive more than 7% (3,500) of the 50,000 allotted visas.

**Who is eligible to apply for the lottery?**

To receive a DV-2005 visa, an individual must be a native of a low admission foreign state (described above). The individual must have at least a high school education or its equivalent, or, within the preceding five years, two years work experience in an occupation requiring at least two years training or experience.

**What does it mean to have a "high school education or its equivalent?"**

"High School education or its equivalent" means the successful completion of a twelve year course of elementary and secondary education in the U.S. or successful completion in another country of a formal course of elementary and secondary education comparable to complete a 12 year education in the U.S. or successful completion in another country of a formal cause of elementary and secondary education comparable to completion of a 12 year education in the U.S. Passage of a high school equivalency examination is not sufficient. It is permissible to have completed one's education in less than 12 years or more than 12 years if the course of study completed is equivalent to a U.S. high school education. Documentary proof of education (including a diploma or school transcript) should NOT be submitted with the application, but must be presented to the consular office at the time of formally applying for an immigrant visa application.

**What does it mean to have "two years work experience in an occupation requiring at least two years training or experience?"**

The determination of which occupations require at least two years of training or experience shall be based upon the Department of Labor's O\*Net Online database. Previously, when work experience was used as the equivalent of high school graduation, the employment position was compared to those in the US Department of Labor Dictionary of Occupational Titles. The Labor Department has phased out this publication and replaced it with the O\*Net online system. To reflect this change, the State Department will begin using O\*Net classifications in determining whether an applicant has the equivalent of a high school education. The O\*Net system is available online at <http://online.onetcenter.org>. As with proof of education, documentary proof of work experience should not be submitted with the application, but must be presented to the consular office at the time of a formal immigrant visa application.

**Can I be a "native" of a country other than the country in which I was born?**

A native is both someone born within one of qualifying countries and someone entitled to the "charged" to such country under Section 202(b) of the Immigration and Nationality Act. Thus someone may be (1) charged to the country of birth of his/her spouse, but only if the spouse is also issued a visa and enters the US at the same time as the primary applicant; (2) a minor dependent child can be charged to

the country of birth of a parent; and (3) an applicant born in a country of which neither parent was a native may be charged to the country of birth of either parent.

**Will applying for the lottery affect one's ability to receive a nonimmigrant visa?**

Applying for the lottery will probably not affect one's chances of receiving a non-immigrant visa. Technically, filing a visa lottery application is equivalent to filing an immigrant petition. According to a source at the Department of State, a consulate will only be notified IF the person is selected in the lottery. An individual who is not chosen is on his honor to state that he/she applied for the lottery. Theoretically, if your name is selected in the lottery, you may have trouble renewing nonimmigrant status while waiting for your name to be cleared for processing (see discussion on the post-selection process for securing a green card). This should only be a temporary problem since permanent residency should eventually be awarded. There is still a risk that you will fail to be deemed eligible for the DV-2005 visa or the Department of State will have overestimated the number of individuals to select in the lottery (see discussion on how the selection process works). However, of all the lawyers with whom I have spoken, none have ever reported a problem with a client having entered the lottery. We have instructed our clients to answer the question on the DS-156 concerning previous immigrant visa applications as follows: "My lawyer entered me in the DV-2005 lottery." We have never had a problem reported and I have yet to hear of anyone denied a visa because of a previous lottery application.

**Do I need to be in lawful visa status to compete?**

An individual who is in the U.S. need NOT be in lawful status to compete in the lottery. However, the Department of State has indicated that it will share information with the Immigration and Naturalization Service for the "formulation, amendment, administration and enforcement" of the country's immigration laws. Furthermore, a person out of status may be subject to the three and ten year bars on admission of the 1996 immigration law and unable to take advantage of winning the lottery. However, we believe that if someone has a pending visa application approved before April 30, 2001 (for example, an I-130 approved but where priority dates are not current), the person may be able to process a lottery selection in the United States. Because the laws on this subject are highly complex, it is recommended that out of status persons contact an immigration lawyer to determine their status and an appropriate strategy.

**Does it matter whether I am or am not in the U.S.?**

Individuals, who otherwise meet the requirements for competition in the lottery, may compete whether they are in the United States or in a foreign country.

**Are there any limitations on the number of entries I can send in for the lottery?**

Each individual is limited to one application in the lottery. If more than one application is received, the individual will be totally disqualified. Note: Hundreds of thousands of applications are rejected every year due to multiple applications. It is not a problem if you have submitted an application during a PREVIOUS lottery registration.

**May a husband and wife each submit a separate application?**

Yes. If otherwise qualified, a husband and a wife may each submit one lottery application. If either spouse is selected in the lottery, the other would be entitled to derivative status.

**If I win, can I get green cards for my family?**

Your spouse and unmarried children under the age of 21 (at the time the green card - not the lottery application - is approved) are automatically entitled to the same status as you. Under the new Child Status Protection Act, children of lottery-based green card applicants, the age of the child minus the adjudication time of the lottery-based immigrant petition at the time a visa number becomes available for the parent is the age used for determining whether the child is eligible for the green card as an under 21 year old child. But to take advantage of this, the child actually must seek to acquire the green card within a year of the visa becoming available. Also, in the case of a child who turns 21 while a lottery-based green card application is pending who is not eligible to claim to be under 21 for purposes of seeking a green card, may still retain the original date issued upon receipt of the original petition and it is not necessary to file a new application because the case will automatically convert to the appropriate category.

**Is there a minimum age to apply for the lottery?**

There is not a minimum age to apply for the lottery. However, the education/work experience requirements will effectively preclude most people under 18 from applying.

**May I adjust status in the U.S. if I am selected?**

An applicant may adjust status (switch to permanent residency in the U.S.) if they meet the normal requirements for adjusting status with the INS (including not having previously been out of visa status). In order to apply for adjustment of status, the INS must be able to complete action on the case before September 30, 2005.

**How does the selection process work?**

The State Department's Kentucky Consular Center will receive all applications submitted electronically. Upon receipt, the KCC will place the application into one of six geographic regions and assign the applicant an individual number. Within each region, the first applicant randomly selected will be the first person registered, the second applicant selected will be the second person registered, etc. When a case is registered, the applicant will immediately be sent a notification letter that will give visa application instructions. About 90,000 persons, both principal applicants and their spouses and children, will be registered. Since it is probable that some of the first 50,000 persons registered will not apply for a DV-2005 visa, this figure is assumed to be large enough to ensure that all of the visas are used. However, there is a risk that some applicants will be left out. Indeed, this has been a problem for people drawn late in the selection process. According to the Department of State, all applicants will be informed promptly of their place on the list. Each month visas will be issued, according to registration lottery rank order, to those ready for visa issuance for that month. Once 50,000 visas are issued, the program ends. Registrants for the DV-2005 lottery will have to have their visa in hand by September 30, 2005 at the latest. You must be prepared to act promptly if your name is selected.

**How will I know if I was selected or not selected?**

The State Department will notify only the winners by mail between May 2004 and July 2004. The State Department will not notify applicants to let them know they were not selected. The only way you will know that you are not selected is if you have not received a registration notification letter before the date the INS officially states that it has stopped notifying people (i.e. if you have not heard by August 2004, assume you were not selected).

**Is there an application fee to enter the lottery?**

No. There is no government application fee for submitting a lottery application. If you win the lottery, you will pay a special DV-2005 case-processing fee later. Winners will also have to pay regular visa fees at the time of visa issuance. Certain law firms and immigration consultants offer application services and the fees for such services may vary. IT IS NOT NECESSARY TO USE SUCH A SERVICE. However, one may want to use a reputable service if they wish to have a US return address, lack Internet access, want someone to review your application if your English skills are weak, or otherwise do not have the time to submit the application on their own.

**Can someone selected in the lottery receive a waiver of any of the grounds of visa ineligibility?**

No. There is no special provision for the waiver of any grounds of visa ineligibility other than those provided for in the Immigration and Nationality Act. Also, holders of J 1 visas with a two year home residency requirement will not be able to receive a waiver of this requirement by virtue of being selected in the lottery. A holder of a J visa can still enter the lottery, but he/she will have to qualify for a residency waiver in the same manner as is normally required to get such a waiver. Because all visas must be issued by the end of September 2005, individuals who have not yet begun their home residency are effectively precluded (unless they are able to get a waiver of the home residency requirement quickly).

**May someone apply for a DV-2005 visa if they are already registered in another visa category?**

Yes.

**Do I need to send photographs of each family member and have each sign the application or just the principal applicant?**

Recent photographs of the applicant and his/her spouse and each child, including all natural children as well as all legally-adopted and stepchildren, excepting a child who is already a U.S. citizen or a Legal Permanent Resident, even if a child no longer resides with the applicant, must be attached electronically to the entry. Group or family photos will not be accepted; there must be a separate photo for each family member.

If the submitted digital images do not conform to the following specifications, the system will automatically reject the Entry Form and notify the sender:

- The image must be in the Joint Photographic Experts Group (JPEG) format.
- The image must be either in color or grayscale; monochrome images (2-bit color depth) will not be accepted.
- If a new digital photograph is taken, it must have a resolution of 320 pixels wide by 240 pixels high, and a color depth of either 24-bit color, 8-bit color, or 8-bit grayscale.

- If a photographic print is scanned, the print must be 2 inches by 2 inches (50mm x 50mm) square. It must be scanned at a resolution of 150 dots per inch (dpi) and with a color depth of either 24-bit color, 8-bit color, or 8-bit grayscale.
- The maximum image size accepted will be sixty-two thousand five hundred (62,500) bytes.

If the submitted digital images do not conform to the following specifications, the entry will be disqualified:

- Applicant, spouse, or child must be directly facing the camera; the head of the person being photographed should not be tilted up, down or to the side, and should cover about 50% of the area of the photo.
- The photo should be taken with the person being photographed in front of a neutral, light-colored background. Photos taken with very dark or patterned, busy backgrounds will not be accepted.
- Photos in which the face of the person being photographed is not in focus will not be accepted.
- Photos in which the person being photographed is wearing sunglasses or other paraphernalia, which detracts from the face, will not be accepted.
- Photos of applicants wearing head coverings or hats are only acceptable due to religious beliefs, and even then, may not obscure any portion of the face of the applicant. Photos of applicants with tribal or other headgear not specifically religious in nature are not acceptable. Photos of military, airline or other personnel wearing hats will not be accepted.

### **What if someone else submits my application?**

The good news is that an original signature is no longer necessary so it will be easier to have other people submit an application on your behalf. Note, however, that if more than one application is submitted for an applicant, the applicant will be disqualified.

### **In what region is my native country assigned?**

(1) Africa: Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Democratic Republic of the Congo, Cote d'Ivoire (Ivory Coast), Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, The Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia, Zimbabwe.

(2) Asia: Afghanistan, Bahrain, Bangladesh, Bhutan, Brunei, Burma, Cambodia, China-Taiwan, Hong Kong Special Administrative Region, Indonesia, Iran, Iraq, Israel, Japan, Jordan, Kuwait, Laos, Lebanon, Macau Special Administrative Region, Malaysia, Maldives, Mongolia, Nepal, North Korea, Oman, Qatar, Saudi Arabia, Singapore, Sri Lanka, Syria, Thailand, United Arab Emirates, Yemen.

(3) Europe: Albania, Andorra, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina (including components), Bulgaria, Croatia, Cyprus, Czech Republic, Denmark (including components and dependent areas overseas), Estonia, Finland,

France (including components and dependent areas overseas), Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, The Former Yugoslav Republic of Macedonia, Malta, Moldova, Monaco, Montenegro, Netherlands (including components and dependent areas overseas), Northern Ireland, Norway, Poland, Portugal, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tajikistan, Turkmenistan, Turkey, Ukraine, Uzbekistan, Vatican City (an independent city under the jurisdiction of the Holy See).

(4) North America: The Bahamas, United States.

(5) Oceania: Australia (including components and dependent areas overseas), Fiji, Kiribati, Marshall Islands, Federated States of Micronesia, Nauru, New Zealand (including components and dependent areas overseas), Palau, Papua New Guinea, Solomon Islands, Tonga, Tuvalu, Vanuatu, Western Samoa.

(6) South America, Mexico, Central America, and the Caribbean: Antigua and Barbuda, Argentina, Barbados, Belize, Bolivia, Brazil, Chile, Costa Rica, Cuba, Dominica, Ecuador, Grenada, Grenadines, Guatemala, Guyana, Honduras, Nicaragua, Panama, Paraguay, Peru, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, Venezuela.

#### **How do I apply for the lottery?**

The web site [www.dvlottery.state.gov](http://www.dvlottery.state.gov) will be available for 60 days and applicants must provide the following information and documentation:

1. **FULL NAME** - Last/Family Name, First Name, Middle name
2. **DATE OF BIRTH** - Day, Month, Year
3. **GENDER** - Male or Female
4. **CITY/TOWN OF BIRTH**
5. **COUNTRY OF BIRTH** - The name of the country should be that which is currently in use for the place where the applicant was born.
6. **APPLICANT PHOTOGRAPH**
7. **MAILING ADDRESS** - Address, City/Town, District/Country/Province/State, Postal Code/Zip Code, Country
8. **PHONE NUMBER** (optional)
9. **E-MAIL ADDRESS** (optional)
10. **COUNTRY OF ELIGIBILITY IF THE APPLICANT'S NATIVE COUNTRY IS DIFFERENT FROM COUNTRY OF BIRTH** - See discussion above regarding claiming another country other than your country of birth.
11. **MARRIAGE STATUS** - Yes or No
12. **NUMBER OF CHILDREN THAT ARE UNMARRIED AND UNDER 21 YEARS OF AGE**
13. **SPOUSE INFORMATION** - Name, Date of Birth, Gender, City/Town of Birth, Country of Birth, Photograph
14. **CHILDREN INFORMATION** - Name, Date of Birth, Gender, City/Town of Birth, Country of Birth, Photograph

**NOTE:** Entries must include the name, date and place of birth of the applicant's spouse and all natural children, as well as all legally-adopted and stepchildren, who are unmarried and under the age of 21, excepting those children who are already U.S. citizens or Legal Permanent Residents, even if you are no longer legally married to the child's parent, and even if the spouse or child does not currently reside with

you and/or will not immigrate with you. Note that married children and children 21 years or older will not qualify for the diversity visa. Failure to list all children will result in your disqualification for the visa.

**Applicants will receive an electronic confirmation indicating that the application was properly received. This is an improvement on the old paper application system where one had to take it on faith that the application was properly received by the State Department.**

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3. Ask Visalaw.com

*If you have a question on immigration matters, write [Ask-visalaw@visalaw.com](mailto:Ask-visalaw@visalaw.com). We can't answer every question, but if you ask a short question that can be answered concisely, we'll consider it for publication. Remember, these questions are only intended to provide general information. You should consult with your own attorney before acting on information you see here.*

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Q - My friend is an H1B worker in USA. Her employer is currently sponsoring her for permanent residency. Her job may require her to travel out of the country in the near future. Also, she recently married to a US permanent resident. Will the fact that my friend has immigration intention (through both work and marriage) jeopardize her chances of getting a return visa to US?

A - Normally traveling is not a problem for someone maintaining her H-1B status. A green card application should not be a problem even after adjustment of status is filed. At that point, an applicant has a choice of using a valid, unexpired visa to come and go from the US or a special travel permit called "advance parole" one can request when a green card petition progresses to the point of applying for adjustment of status.

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Q - I got F-1 Visa in 1999. I have studied until 2000 and then came back home, and never visited in the U.S since then. Now, within few days I should get my new I-20 for I'm going to finish my degree study.

My F-1 Visa is valid until 17MAY2004. My question is:

Can I still enter to the U.S with my current F-1 Visa and new I-20, and then when I'll be back to visit my family I'll renew it, or should I do make a renewal before I'll go to the U.S again?

What is the best thing for me to do? I do not want to get into a situation when I'll come to the airport and they will send me back to my home country to make the renewal...

A - If your new program is beginning before the expiration of your existing F-1 visa or within 30 days of the expiration of your visa, then you can use it to enter the United States. So, if you will be starting school in the Spring 04 semester, then you can enter with that visa. Or, if your first semester is beginning within 30 days of 17

May 2004, you can use that visa (reason being, under the new F-1 regulations you can enter the US ONLY 30 days before your school starts. So, if your school is starting on July 1st, you will not be able to enter the US with your existing visa, let's say on May 1st, because it is more than 30 days before your school starts). You have to be careful about this, because when you were a student in 2000, you were able to enter the US up to 3 months before your school started.

If you wish, instead of using your old visa, you can apply for your visa now. Or, you can apply for a visa at a later date, when you're visiting your family.

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Q - I am on a J-1 visa, I don't really like my job but I do like the USA. I would like to work on a H-1b with another company. Had an interview with one company who said they would give me the job...but they could not help me get the visa? Any suggestions?

A - There are a couple of things that I often suggest clients look at doing:

1. Don't bring up your visa status right away if the employer does not ask. An employer will immediately dismiss you in their minds if it looks like it will be a hassle to bring you on board. If they can get to know you a little bit and are impressed, they may be more willing to undertake a visa application.
2. Do offer to pay all the legal fees and the premium processing fee. For now, there is no worker retraining fee, but if it comes back, the employer must pay that amount.
3. Establish a relationship with an immigration lawyer and offer to have your lawyer explain the process to a prospective employer.
4. Consider signing an employment agreement with an employer guaranteeing that you will stay with the employer for an extended period of time. This might make the employer more comfortable with undertaking the immigration petition process.

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Q - I am a student with F1 visa. My husband didn't come to the US yet. What will happen when he will come? Which visa can he get? A f2 visa? Is it possible to change the visa to a student visa (He would like to study too)?

A - Your husband has two options:

1. He can enter the US as an F-2 and at a later date can change his immigration status to F-1. That, depending on the region of the country that you are in, may take up to 3-4 months. Before he obtains the F-1 status, he CANNOT start studying or accept on-campus employment like a graduate assistantship.
2. If he is already admitted to a school (or can be admitted quickly), instead of coming here with an F-2 visa and then changing, he can apply for an F-1 visa and enter the US as a student.

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Q - Must the I-140 (second preference) be accompanied by evidence of the ability to pay wage OR the evidence is only submitted upon request? If it must be accompanied, what is the best evidence for such a requirement? What evidence do you usually submit? BTW, is the Form I-129W still required for filing 7th H-1B right now?

A - You need to show ability to pay at the I-140 stage. A company submits a variety of types of documents including tax returns, bank statements, payroll tax records, financial statements etc.

The Form I-129W is still required for now even though the fee is not currently in force.

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Q - If I recall, two years ago, when I intended to apply for the green card lottery visa, it mentioned, that when we take photographs, our face has to be turned towards the left sight a little in order for our right ear to be seen. 1) Do we have to do the same for DV 2005 application as well? 2) We do not pay fees now for the DV 2005 application since it is electronically submitted.

A - You are recalling incorrectly. That is the format for the Department of Homeland Security's immigration photos and not the State Department (which administers the annual lottery).

As for fees, there never was a fee to enter the lottery and that will remain the case. There are services that take care of one's lottery entry and you might be thinking of one of them. Our firm, in fact, provides this service though we always make clear that the rules for entering the lottery are easy enough for most people to do themselves. Our applicants tend to use our services because they want to use our firm's address as their return address or they have very weak English skills and want us to help with the application. But we always make clear that most people can enter themselves in the lottery and don't need this kind of service.

You can find more information on the lottery in this week's ABCs of Immigration column.

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#### 4. Border News

Hip-Hop Hall of Fame rapper Slick Rick, or Ricky Walters, is awaiting his release from USCIS detention after a federal judge reversed a deportation order. His attorneys hope that he will be released on Tuesday.

Walters, who has been incarcerated 17 months, served two and a half years for attempted murder. Five months after his release into a work program, Walters was

jailed when the then INS initiated proceedings under a law requiring foreign nationals who commit felonies in America to be deported.

The BIA issued Walters a 212c waiver in 1995, allowing him to remain free in the U.S. But after performing on a cruise ship in 2002, Walters was arrested upon his return to Miami and charged with deporting himself and illegally reentering the country.

This week a federal judge determined that the BIA should never have reversed its earlier decision that the British-born rapper is a legal U.S. resident.

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On November 4, U.S. Customs and Border Protection Border Patrol Agents assisted the Arizona Department of Public Safety apprehend four men suspected to be gunmen involved in a shooting incident between rival immigrant smugglers along Interstate 10 north of Casa Grande, Arizona.

Authorities believe that the smugglers attacked another group of smugglers for stealing a load of illegal immigrants they had brought across the U.S.-Mexico border. The incident left four people dead and five more injured.

\*\*\*\*\*

South Texas human rights advocates recently remembered and honored those who immigrants who died trying to cross the U.S.-Mexico border. Human rights advocates in South Texas believe that increased border control enforcement by the Border Patrol has caused immigrants to take more dangerous and often deadly routes to cross the border. Since 1997, 692 people have died crossing the McAllen sector, the southernmost section of the border that covers only one sixth of the Texas-Mexico border.

A similar ceremony was held in Sunland Park, New Mexico, where around 400 people gathered in remembrance.

The "Day of the Dead", the Mexican version of the Catholic "All Saint's Day", is a happy occasion where the souls of the dead are believed to visit their loved ones.

\*\*\*\*\*

Migration reform may be in the near future, according to U.S. Ambassador Tony Garza. According to Garza, the U.S. Congress should and likely will approve limited migration reform in the next few months. This is the most optimistic statement to come from a Bush Administration official thus far regarding the fate of immigration reform proposals.

Congress has already proposed three separate bills that will give temporary work permits to undocumented migrants in the United States. Two of these bills lead to the legalization of millions of illegal and undocumented immigrants. The third bill applies only to the legalization of up to 500,000 agricultural workers. These bills are

a response to the growing number of Mexican deaths caused while trying to cross the U.S.-Mexico border.

The bills face criticism from many legislators who believe the programs are de facto amnesty programs that reward migrants for breaking U.S. immigration laws.

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## 5. News From The Courts

Gutierrez v. Ashcroft  
2003 US Dist LEXIS 19421

Petitioner Luis Gutierrez came to the United States as a legal resident at age seven. He later committed five burglaries and was imprisoned for his actions. While in prison, Gutierrez was served with Notice to Appear in Removal Proceedings. In 1998, an Immigration Judge ordered Gutierrez removed and deemed him ineligible for any relief from removal. The Board of Immigration Appeals, by a 3-2 vote, denied Gutierrez's request that he be found eligible for discretionary relief under §212(c) of the Immigration and Nationality Act. The BIA relied on the Antiterrorism and Effective Death Penalty Act of 1996 to hold that aggravated felons were ineligible for such relief. Then, in 2001, the Supreme Court held that such retroactive denial of an INA §212(c) hearing to be unconstitutional in *INS v. St. Cyr*. *INS v. St. Cyr*, 533 U.S. 289.

The United States District Court in New Jersey found after his removal that Gutierrez had conveyed to his attorney to pursue all possible appeal options. While his attorney did represent to Gutierrez that he had filed a habeas petition, the only appeal option available, the attorney in fact did not file any appeals. Gutierrez filed a habeas petition after removal, but the U.S. District Court denied the request and dismissed the case for lack of subject matter jurisdiction because Gutierrez was not in custody at the time he filed the appeal.

In the present action, Gutierrez filed a Motion to Make New Findings and to Alter or Amend the Judgment on the basis of Federal Rules of Civil Procedure 52(b) and 59(e). Gutierrez's attorney only had one business day to file a habeas claim before Gutierrez was removed. The attorney claimed to be awaiting the outcome of a habeas appeal in another similar case and when that case was decided in the negative, the attorney decided that it was not worthwhile to file the habeas petition for Gutierrez - without telling his client. The Court found that the evidence "strongly negated" any inference that Gutierrez had instructed his attorney to not proceed with the appeal. In fact, the Court found that the evidence, including testimony from Gutierrez's wife and mother, weighed in favor of Gutierrez believing that the habeas petition was pending.

The Court found that the attorney misled Gutierrez and misrepresented to Gutierrez that he had filed a habeas petition. The Court ruled that Gutierrez was clearly prejudiced by ineffective assistance of counsel due to his attorney's failure to file for §212(c) relief while holding out to Gutierrez and his family that he had in fact filed the necessary paperwork. The Court also held that the attorney understood that the Gutierrez family believed that an appeal was in the process and never attempted to correct them.

The Court also found that if the attorney had filed a habeas petition, Gutierrez would have had a strong chance of success following the St. Cyr case. The Court granted Gutierrez's motion and ruled that the only relief that prevented substantial injustice was to deem Gutierrez's habeas petition to have been filed prior to his deportation since this was when he believed the petition had been filed. The Judge also ordered that Gutierrez be provided with a §212(c) hearing.

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#### 6. Government Processing Times

This week there are new times to report for the following service centers:

California (10/15/2003): <http://www.visalaw.com/california.html>

Nebraska (11/01/2003): <http://www.visalaw.com/nebraska.html>

Texas – Revised (10/15/2003): <http://www.visalaw.com/texas.html>

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

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#### 7. News Bytes

Temporary Protected Status will not be recommended by the U.S. State Department for Columbian citizens living in the United States according to information conveyed to Columbian officials. Temporary Protected Status, or TPS, is granted by the U.S. to immigrants who are forced to flee their countries due to natural disasters or war. However, the United States believes that the security conditions in Columbia have improved enough to reduce the need for TPS to be extended to Columbians.

TPS for Peruvians and Columbians is currently part of the proposed Andean Adjustment Act which is pending in Congress. At least 258,173 Columbians are legal residents in America, but an estimated two million more are thought to live in the United States illegally.

\*\*\*\*\*

Michael J. Garcia has been nominated to the position of Assistant Secretary of DHS for ICE. The Senate voted by unanimous consent to refer Mr. Garcia's nomination to the Senate Judiciary Committee for a period not to exceed thirty days.

\*\*\*\*\*

USCIS is planning to shift certain live telephone assistance back to service centers. The final decision will be determined over the next several weeks upon USCIS analysis of the current system.

\*\*\*\*\*

Individuals who registered under NSEERS, the National Security Entry-Exit Registration System, are required to reregister within ten days of the date they registered last year. Each individual's deadline is based on the original date on which he registered last year.

\*\*\*\*\*

Representatives from the Alliance for International Educational and Cultural Exchange and the Association of International Practical Training and NAFSA met with staff of the Department of Homeland Security and the Social Security Administration to discuss new procedures for a Memorandum of Understanding between the DHS and SSA. The new procedures should assist the SSA in verifying the status of F and J visa status holders more efficiently. The projected time for implementation is December 1.

\*\*\*\*\*

The US Department of Health and Human Services (HHS) has temporarily suspended the clinical J-1 waiver program. The waiver program allows foreign medical students studying in the United States to forgo the home residency requirement of the J-1 visa by working in a medically underserved area in the United States.

The HHS waiver program was first implemented on June 12 of this year. It was designed to fill the void created by the post-September 11 suspension of the US Department of Agriculture clinical waiver program for J-1 physicians. HHS has not indicated when the program will go back online. State 30 officials have been complaining privately that the move by HHS is unreasonable particularly since a number of states changed their waiver programs to account for the new HHS program.

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## 8. International Roundup

Last year, Japan deported a suspected al-Qaida member, Naim Feroz, a Pakistani who was living in Tokyo as a house painter. Mr. Feroz allegedly was trained at a terrorist base in Afghanistan. According to Kyodo News, during a search of Mr. Feroz's home, police found documents linking him to the group and photos of al-Qaida leader Osama bin Laden. The police also suspects that he may have been in phone contact with al-Qaida members in other countries during his stay in Japan.

Earlier this year, reports revealed that Japanese and U.S. security officials suspected a high-ranking al-Qaida member came to Japan in 2000 to raise funds and left just before September 11, 2001.

\*\*\*\*\*

Members of an alleged al-Qaida sleeper cell in the Toronto area, who were mostly foreign students, were deported to their native Pakistan. Immigration spokesmen said that some of the alleged terrorists were failed refugees who had previous removal orders.

\*\*\*\*\*

Because Korea's immigration rules are causing problems for foreign investors, beginning next year, Korea will allow foreign investors to obtain a three-year visa in place of the current one-year visa. This new allowance is part of a five-year plan to improve living conditions for foreigners. Additionally, foreigners who invest over \$100 million in Korea will be eligible for permanent resident status regardless of the qualifications required by law.

The government plans to ease other permanent residence qualifications. Beginning in 2005, foreigners can apply for South Korean permanent resident status after residing there for less than five years, instead of the twelve-year period currently required. Also, in order to improve the quality of foreign schools, foreign teachers will be able to obtain visas without being forced to leave the country in order to obtain them at Korean embassies abroad.

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According to an Amnesty International report, immigrants such as Cubans and Haitians who flee their homeland for the Bahamas are treated like criminals and then forced to return home.

Bahamian authorities responded that the Bahamas is still developing, and is struggling with limited resources. Because of this, it must utilize whatever resources necessary in order to prevent the country from becoming a gateway for these individuals to gain entry to the U.S.

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## 9. Legislative Update

The following bills were recently introduced in Congress:

[H.R.3452](#): To improve homeland security.  
Sponsor: Rep Sessions, Pete [TX-32] (introduced 11/6/2003)  
Committees: House Judiciary  
Latest Major Action: 11/6/2003 Referred to House committee.  
Status: Referred to the House Committee on the Judiciary.

[H.R.3459](#): To improve the health of minority individuals.  
Sponsor: Rep Cummings, Elijah E. [MD-7] (introduced 11/6/2003)  
Committees: House Energy and Commerce; House Education and the Workforce;  
House Resources; House Judiciary; House Ways and Means; House Agriculture  
Latest Major Action: 11/6/2003 Referred to House committee.

Status: Referred to the Committee on Energy and Commerce, and in addition to the Committees on Education and the Workforce, Resources, the Judiciary, Ways and Means, and Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

[H.R.3461](#): To bar Federal agencies from accepting for any identification-related purpose a State-issued driver's license, or other comparable identification document, unless the State has in effect a policy requiring presentation of acceptable forms of identification prior to issuance of the license or document, and the State requires the license or document, if issued to a nonimmigrant alien, to expire upon the expiration of the alien's authorized period of stay in the United States, and for other purposes.

Sponsor: Rep Flake, Jeff [AZ-6] (introduced 11/6/2003)

Committees: House Government Reform; House Judiciary

Latest Major Action: 11/6/2003 Referred to House committee.

Status: Referred to the Committee on Government Reform, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

[H.RES.432](#): Expressing the sense of the House of Representatives that the United States should take action to meet its obligations, and to ensure that all other member states of the United Nations meet their obligations, to women as agreed to in United Nations Security Council Resolution 1325 relating to women, peace, and security, and the United States should fully assume the implementation of international law relating to human rights that protects the rights of women and girls during and after conflicts, and for other purposes.

Sponsor: Rep Johnson, Eddie Bernice [TX-30] (introduced 11/4/2003)

Latest Major Action: 11/4/2003 Referred to House committee.

Status: Referred to the House Committee on International Relations.

[S.1830](#): A bill to authorize appropriations for fiscal years 2004 and 2005 for the Trafficking Victims Protection Act of 2000, and for other purposes.

Sponsor: Sen Brownback, Sam [KS] (introduced 11/6/2003)

Committees: Senate Foreign Relations

Latest Major Action: 11/6/2003 Referred to Senate committee.

Status: Read twice and referred to the Committee on Foreign Relations.

[S.1833](#): A bill to improve the health of minority individuals.

Sponsor: Sen Daschle, Thomas A. [SD] (introduced 11/6/2003)

Committees: Senate Health, Education, Labor, and Pensions

Latest Major Action: 11/6/2003 Referred to Senate committee.

Status: Read twice and referred to the Committee on Health, Education, Labor, and Pensions.

For a review of all the immigration bills introduced this year, visit our legislative chart at [www.visalaw.com/advocacy.html](http://www.visalaw.com/advocacy.html).

Siskind Susser's Toronto branch partner Leonard Pearl handles matters involving Canadian immigration laws. He can be reached at [lpearl@visalaw.com](mailto:lpearl@visalaw.com)

#### Reduction of Skilled Worker points required to qualify

Just a quick note to remind applicants that after several court challenges the Canadian Minister of Citizenship & Immigration has reduced the number of points required to qualify as a skilled worker from 75 to 67. It is anticipated that the Minister will eventually increase the number of points required to qualify.

#### On-Line Services for Canadian Citizenship & Immigration Clients

The on-line service program is a tool that allow clients to view the status of their immigration applications for family class, sponsorship and permanent resident applications has been expanded to include:

- Permanent resident card applications
- Canadian citizenship applications
- Proof of Canadian citizenship applications

#### Canada and Alberta Sign Agreement

The Minister of Citizenship and Immigration signed a Memorandum of Understanding with the Alberta Provincial Government that sets out the terms of a pilot project to fast-track the processing of study permit applications. They also agreed to allow foreign students who graduate from post-secondary institutions in Alberta, to stay and work in the province for an extra year. In addition the Ministers agreed to expand the Alberta Provincial Nominee Immigration Program and double the number of candidates who can be nominated for immigration to 800.

#### Canada and Manitoba launch student off-campus work pilot program

The Manitoba Government launched a new two-year pilot program to permit international post-secondary students studying in the province to work off campus.

Generally, the program will allow full-time international students who have completed one year of study at a university or public college in the province to apply for an open work permit. The permit will allow the applicant to work off campus for a maximum of 20 hours a week while they are registered as full-time students.

*If you have any questions about Canadian Immigration laws please contact Leonard Pearl at our Canadian office ([lpearl@visalaw.com](mailto:lpearl@visalaw.com) or 905-764-8767).*

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#### 11. Foreign Student Enrollment in Decline

The Institute of International Education released a report this week disclosing only a 0.6 foreign enrollment increase in the 2002-2003 academic year. In the previous academic years, foreign enrollment had spiked 6.4 percent each year.

The percentage drop, the lowest growth rate in seven years is probably due in large part to foreign students not wanting to deal with new stringent visa restrictions in the United States. The issuance of student visas is one of the areas of immigration law that has toughened dramatically following September 11.

The declining rate is causing concern for U.S. schools. According to the Institute of International Education (IIE), foreign students bring in an estimated \$12 billion annually with tuition and other expenses. With a decrease in the amount of foreign students entering U.S. schools, academics may also face a decline in the amount of academic research being conducted at individual universities and colleges. The larger student population from other countries is also seen as promoting a diverse atmosphere on the campus, while also strengthening educational relations between the U.S. and other countries.

In addition to the study published, IIE conducted another online survey. According to the survey results, 46 percent of U.S. colleges reported declines in foreign enrollment in the current school year.

While the numbers in America are dropping, the enrollment figures for other countries around the world are on a sharp incline. The United Kingdom's Universities and College Administration Services reports a 36 percent rise in the enrollment of Chinese students and a 16 percent increase in students from India. Australia has also had similar increases. The clear inference from this data is that foreign students are still looking to study abroad, but not in the US.

The Association of International Educators (AIE) will reveal a study detailing their findings on the topic this week. According to the associate executive director for the AIE, their report will detail similar findings. He predicted a further decline in foreign enrollment if the United States does not relax visa restrictions.

The study can be found online at <http://opendoors.ilenetwork.org/>.

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## 12. Report on Refugee Admissions for 2004

The Proposed Refugee Admissions for Fiscal Year 2004 were recently issued on behalf of the President in a report to the Congress. The report has information such as a description of the nature of the refugee situation and the impact of the refugee's resettling in the United States. The report also addresses the many problems faced by the implementation of new programs following September 11.

The specific goals listed in this year's report include the following: strengthening the United Nations Commissioner for Refugees (UNHCR); establishing special response teams; increasing United States government resources; expanding family reunification; addressing "long-stayers"; protecting unaccompanied minors; and undertaking a comprehensive study of the program. For the second year, the government would admit far fewer refugees than they had initially accepted.

Approximately 70,000 slots are called for the 2004 fiscal year. This is the same as in FY 2003. However, only 28,000 refugees were actually admitted in the last fiscal

year, a fact that has drawn a great deal of criticism from refugee advocates. They argue that the allotment of 70,000 is essentially meaningless if the Department of Homeland Security simply admits the number that the agency sees fit rather than what the President promises.

The report makes provisions for an increase in the proposed ceilings for refugees from Africa and East Asia, while lowering the ceiling for Europe and Central Asia. The President also proposes to specify special circumstances where certain refugees may be considered of special humanitarian concern to the United States, including persons from Vietnam and the Former Soviet Union.

The number of African refugees has previously far exceeded the imposed ceilings. The U.S. will continue to strive to identify populations in need of rapid resettlement. The President proposes a ceiling of 25,000 to African refugees.

For East Asia, the President proposes an admissions ceiling of 6,500. In Europe and Central Asia, the report notes growing progress in achieving goals such as democracy, economic growth and tolerance in The Baltics, Belarus, Kazakhstan, Kyrgyz Republic, Russia, and Turkmenistan. The proposed ceiling for refugees from this region is 13,000.

In Latin America and the Caribbean, the report indicates a rising level of concern for the deteriorating situation in Haiti, with the U.S. supporting the UN's presence in the Dominican Republic to deal with the outflow of refugees. The proposed ceiling for individuals from these countries is 3,500.

The Near East and South Asia region is home to world's largest refugee population, at just over seven million. Nearly two million Afghan refugees have been resettled since the end of 2001, but the region is still facing difficulty following wars in Afghanistan and Iraq. The proposed regional ceiling for 2004 is 2,000.

In addition to these figures, the report details a need for 20,000 funded but unallocated admissions numbers to be used to create flexibility to accommodate larger populations from any specific region in need. Some of the areas under consideration for these admission numbers are: Bhutanese in Nepal, Liberians in West Africa, and Vietnamese in the Philippines.

The media age for refugees resettled in 2002 was 26 years old. Males were proportionally the majority of refugees from countries other than Somalia and Afghanistan, but not more than 56% of the total. During 2002, 77% of newly arrived refugees resettled in 15 states. California (16%) resettled the largest number, followed by Washington state (10%), New York (9%), and Florida (7%). The largest number of refugees were admitted from the former Soviet Union (37%), the former Yugoslavia (20%), Vietnam (20%) and Cuba (7%).

To view the report in full, go to:

<http://www.state.gov/g/prm/asst/rl/rpts/25691.htm>

In February 2002, Attorney General John Ashcroft announced that the Justice Department was implementing reforms in order to reduce the backlog of over 56,000 cases at the Board of Immigration Appeals (BIA). However, these reforms have shifted the backlog of cases to the federal courts.

In September, the Administrative Office of the U.S. Courts stated that circuit court appeals from decisions made by the BIA increased by approximately 400% from March 2002 to March 2003, for a total of 8,446 immigration administrative agency appeals filed in federal court. These appeals mainly came from immigrants who were unable to win relief from deportation orders.

In March 2002, total administrative agency appeals of BIA decisions increased by 48%, and rose to 73% in April. By February 2003, monthly filings of these appeals grew to 357%. Currently, there is a backlog of over 5,000 appeals. The Second and Ninth Circuits received the largest portion of these appeals. From February 2002 to February 2003, filings in the Second Circuit increased by 781% and filings in the Ninth Circuit increased by 385%.

This overwhelming number of petitions sent to the courts of appeals is attributed to the increased production by the BIA as a result of the Attorney General's reforms of the BIA. However, the Attorney General did meet his goal to clear the backlog of cases, and the BIA's monthly production has risen by 30%.

The purpose of the BIA is to decide individual appeals by immigrants who have been found by immigration judges to be deportable. The BIA then issues precedential decisions in order to guide immigration judges, immigrants and others within the immigration system.

Before 1999, the BIA sat in three-member panels to decide appeals and issued written opinions of its decisions. After 1999, in an attempt to decrease the caseload and backlog of the BIA, the Justice Department allowed members of the BIA to sit alone in affirming the decisions of immigration judges without written opinions. By December 2001, it appeared that this idea was working. Ashcroft's new rules, implemented in February 2002, expanded the use of affirmances without opinion by single board members, preserved the three-member panels for complex and precedential cases, eliminated de novo review of facts, imposed time limits for processing appeals and reduced the size of the board from twenty-three to eleven members.

These new rules were criticized, particularly the reduction in members of the board. Critics said that the five members who were asked to leave were those who tended to be "pro-immigrant." Another criticism was that affirming more decisions without opinions and the elimination of de novo review allowed for major mistakes in decisions. By allowing the BIA to affirm a decision without an opinion, the circuit courts can no longer look to a BIA opinion for information behind the decision. Also, some circuit courts are sending remanding cases back to the BIA due to errors in decisions that were summarily affirmed by the BIA.

The American Bar Association's Commission on Immigration Policy, Practice and Pro Bono requested an analysis of the immigration appeals system as a result of the changes made at the BIA. About fifty lawyers and legal assistant at Minneapolis' Dorsey & Whitney conducted a pro bono study in order to assess the surge in appeals. The study found that due to the increased production at the BIA,

immigrants and their attorneys have been dissatisfied with BIA decisions. It reported that courts are finding mistakes in some decisions, with little or no review by the BIA.

The Dorsey report also found that before the spring of 2002, the BIA reversed one in four appeals in favor of immigrants. After this time, reversals in favor of immigrants have decreased to one in ten. By the end of 2001, about 10% of BIA decisions were summary affirmances. By March 2002, this rose to over 50%. The Justice Department has called this study "baseless."

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#### 14. Wal-Mart Receives "Target Letter" From U.S. Attorney's Office, Shares Fall 33 Cents

Wal-Mart announced on Tuesday that the company had received a "target letter" from the U.S. Attorney's Office on October 31 following an October 23 raid. The letter stated that Wal-Mart had allegedly violated federal immigration laws in employing illegal immigrants and as a result, the company is under investigation. That morning Wal-Mart stock fell 33 cents to \$58.71 on the New York Stock Exchange in morning trading.

The government's case rests on Wal-Mart's presumed knowledge that its contractors were hiring illegal workers based on raids in the past. However, the government has not revealed any evidence of actual knowledge on Wal-Mart's part.

The raids spanned 61 stores in 21 states and resulted in the arrests of 250 allegedly illegal workers. The raids focused primarily on the floor-cleaning employees. Ten workers were directly hired by Wal-Mart as in-house floor cleaners. The remaining workers were employed by companies hired by Wal-Mart for cleaning services. The subcontractors appear to have violated overtime, Social Security, and worker's compensation laws. Wal-Mart uses about 100 contractors to clean its 1,000 stores.

Company officials claim that Wal-Mart had no knowledge of the illegal workers. In response, federal law enforcement officials contend that in 1998, federal agents raided Wal-Mart stores and found 102 illegal immigrant janitors. Wal-Mart, the government contends, should and must have been on notice of possible illegal workers in their stores.

The workers were taken to local immigration offices, and while most of the immigrants were released, only those with criminal records were detained. The workers came from 18 different countries.

In 2002, Wal-Mart had sales of \$244.5 billion. The company employs approximately 1.1 million people in the United States and 300,000 abroad.

Wal-Mart could face criminal charges and possible fines of up to \$10,000 per illegal worker, a total of \$2.5 million.

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#### 15. CIS Reports Immigration to U.S. Unaffected by Economy

According to a new report from the Center for Immigration Studies, a think tank that is generally known for favoring tougher immigration rules, immigration has increased, even with the economic situation and September 11 attacks. The pace of immigration, legal and illegal, corresponds to the pace of immigration in the 1990s. In March 2003, the total foreign-born population reached 33.5 million, a net increase of one million since 2002.

The report has also found the following:

- Over 2.3 million immigrant workers have arrived in the U.S. between 2000 and 2003. From 1997 to 2000, over 2.2 million immigrant workers arrived.
- Approximately half of the immigrants who arrived between 1997 and 2000 and between 2000 and 2003 were illegal immigrants.

CIS also reported that there does not seem to be a relationship between economic conditions in the U.S. and immigration trends. In Arizona, Georgia, Illinois, Maryland, New Jersey, New York, North Carolina, Texas, Virginia and Washington, unemployment increased. At the same time, more immigrants have moved to these states. This trend is attributed to the fact that while the U.S. as a whole and these specific states individually have been hit hard by recession, immigration is driven by the higher standard of living in the U.S. and not the demand for labor.

For example, in Illinois, there was an unemployment rate of 4.9% in 1997, 4.2% in 2000 and 6.9% in 2003. Between 1997 and 2000, 97,000 foreign-born workers arrived in Illinois, and from 2000 to 2003 122,000 foreign-born workers arrived. In California, the rate of unemployment in 1997 was at 6.8%, 5.4% in 2000 and 7% in 2003. From 1997 to 2000, 485,000 foreign workers arrived in California and 367,000 arrived between 2000 and 2003. Nationally, the unemployment rate in the U.S. was 5.1% in 1997, 4.1% in 2000 and 6.2% in 2003. However, from 1997 to 2000, 2,231,000 foreign-born workers arrived in the U.S. and from 2000 to 2003, the number rose to 2,338,000.

The report explains that immigration to the U.S. today differs from immigration in other times. In the 19<sup>th</sup> century, legal immigration would decrease when there was a recession. Data shows that in the 20<sup>th</sup> and 21<sup>st</sup> centuries, even when there has been an economic recession in the U.S., immigration continues to increase. CIS claims that compared to conditions in their home countries, immigrants would rather move to the U.S. and be unemployed or rely on others for support.

The full report can be viewed at <http://www.cis.org/articles/2003/back1603.html>.