

Siskind's Immigration Bulletin
November 25, 2003

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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: Penny Egel, Paola Palazzolo, Maryam Tanhaee and Megan Turngren.

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1. Openers

Dear Readers:

Happy Thanksgiving Day to our readers. Those of you who read this column know that I try and find an immigration tie-in to just about anything. So this week is not a shocker. For those readers who are not so familiar with the Thanksgiving story, it is

basically a holiday where Americans partake in a festive meal and give thanks for the many blessings we have in our lives. It stems from the days when the Pilgrims, English settlers of the 17th century, invited their Native American neighbors to join them in a feast celebrating a successful harvest. The 17th century feast sadly was followed by centuries of conflict between the earliest immigrants to America (the native Americans were immigrants as well since they originally came here from Asia) and the European immigrants who arrived later.

Americans have achieved much when they've heeded this lesson of co-existence and extended a welcoming hand to newcomers. And immigrants to this country also benefit when they extend a welcoming hand in return—seeking to participate in their wider communities, learning about the culture and customs of the country, learning English, working hard and creating jobs for Americans, etc. The Pilgrims (unlike other early European settlers) made a point of extending the hand of friendship and, in many respects, are the first model immigrants in a long and positive history of immigration to this country.

We really don't have a holiday in this country specifically celebrating the contributions of immigrants. But Thanksgiving is certainly close.

Speaking of extending the welcoming hand, we greeted the news cheerily that the Department of Homeland Security is planning on scrapping the Special Registration program for men from Arab and Muslim countries. The program was rife with abuses and will, in my opinion, always be compared with the internment of Japanese-Americans in World War II.

In firm news, we welcome two new people to our firm this week. Salam David is our newest attorney. She has worked for the last several years as the in house immigration attorney for International Paper, one of the country's largest companies. Salam is an immigrant herself—she's Lebanese—and brings an interesting perspective to the job. Obviously, as an immigrant, she knows what clients go through during the long journey to citizenship. And as the attorney for her employer responsible for overseeing outside law firms handling immigration matters, she knows what corporate clients need for the successful management of their immigration matters.

We also welcome Penny Egel. Penny is a recent graduate of the University of Memphis School of Journalism. Penny will be working on our publications (including this one) and will manage much of our firm's marketing and public relations activities. I've known Penny for years and am very enthusiastic about her joining our firm.

Welcome Salam and Penny!

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

2. The ABC's Of Immigration–J-1 Flowchart Part II: No Objection Letters

This is the second in a series of flowcharts for J-1 visa holders with a two-year home residency requirement. The flowchart linked below shows how to determine whether or not a J-1 visa holder is required to obtain a No Objection Letter from his/her foreign government.

J-1 No Objection Letter Flowchart:

http://www.visalaw.com/03nov4/no_objection_letter.pdf

3. Ask Visalaw.com

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

Q - About the DV-2005 Visa Lottery: What if a person that is eligible in the visa lottery gets married after the application is accepted, but before receiving the green card (in the case where he/she receives it)? Same question, but for people that have the wedding planned just little after the green card is awarded to him/her.

A - If one marries before the green card is granted and can get the spouse's application in and adjudicated before the annual processing deadline, the spouse can get a green card. It would not matter that the marriage had not taken place before the lottery application was submitted. If the marriage takes place after getting the green card, the spouse will be in a queue under the 2A family category that is backlogged about seven years. The spouse would have to wait that long to legally enter the US based on the petition. So marrying earlier is definitely better.

Q - I am looking at the table of the processing times for different categories. Under Vermont, I am trying to find processing time for citizenship (N-400), but I see a date of 03/03/2003 for N-600. What is the difference between N-400 and N-600?

A - The N-400 is for a naturalization application for someone who wishes to acquire citizenship. The N-600 is just to get a citizenship certificate for someone who is already a citizen.

Q - Is it true that an illegal Mexican in the United States can apply for a green card if they are here for ten years? How long can an Optional Practical Training student remain in the U.S. before transferring to another school, changing their status or leaving the country after they complete their 1 year of OPT?

A - IF you are in deportation proceedings and IF you have been here for 10 years and IF you have immediate relatives who are permanent residents or green card holders and IF you have no criminal issues, then you can ask a judge for a green card. Obviously, not attractive for most people.

F-1s have 60 days to leave the US or apply for a change of status after the completion of their practical trainings. Under the new requirements, if they decide to transfer to a new school and obtain a new I-20, then they must begin their new programs within 5 months of the OPT completion date. This is a very helpful new benefit.

Q - I was a permanent resident when I applied for my wife to get her the green card about two years ago. I will become a US citizen in near future, probably in three weeks. Should I file another I-130 form and send all the information again or I should inform the immigration office that my status has been changed and ask them to modify the first I-130 form for my status change?

A - You should be able to take the receipt for the I-130 and re-file the I-130 (without a new fee) along with your adjustment package and the I-130 receipt from the Service Center at your local USCIS office. Let me know if you are interested in our firm handling the case for you.

Q - Does unauthorized presence continue after an adjustment of status application is filed. Applicant entered the U.S. on visa waiver on March 11, 2003 and given 90-day stay. She is married to a U.S. citizen and filed I-485 on Nov. 14 before accumulating 180 days of unauthorized status. She has applied for advance parole but it will not be issued by Dec. 5, 180 days after her authorized stay of June 9. Will she face the three-year bar upon trying to return to U.S with advance parole?

A - Filing the adjustment of status application will stop the clock on the reentry bar. So if the applicant overstayed less than 180 days when the adjustment application is filed, the reentry bars should not apply.

Q - My wife applied for reentry permit in January 1998 and she left the USA. While she was in Pakistan she got reentry permit for 2 years, and then came back to USA a week before reentry permit expiration. Technically she spent more than 2 yrs as she left b4 approval of reentry permit. My question is when she can apply for citizenship. Some says 4 yrs some say 5 yrs. I am not a citizen.

A - Your wife will need to meet several residency tests -

1. At least 90 days living in the district where she is applying;
2. At least two years and six months total time spent in the US in the five years prior to the application being submitted;

3. No break in continuous residence (continuous absences from the US of more than six months are PRESUMED to break residency and absences of more than a year definitely are a problem unless the government has pre-approved an application to preserve residency)

The date of approval of the reentry permit is not relevant. Just the actual dates in and out of the US.

4. Border and Enforcement News

ICE recently implemented a new policy for nationals from Specifically Designated Countries ("SDC"). These SDCs are designated by the ICE as countries that promote, produce, or protect terrorist groups or individuals. Any alien from an SDC who is detained or apprehended by the ICE must be cleared by the Custody Review Unit ("CRU") before they may be released. It is estimated that the CRU checks may take up to three weeks in some cases.

Officials in the San Diego area discovered a cross-border tunnel between Mexicali and Calexico in the Imperial Valley. Border Patrol officials believe that these cross-border tunnels are used for drug and people smuggling. It is believed that most of these tunnels were in existence before smugglers discovered them. The tunnel led to an auto repair shop in Mexicali. The owner told authorities that the tunnel was used to smuggle drugs and people.

This is the tenth tunnel discovered in California and Arizona since border control efforts were heightened after September 11.

Operation Trans Guard, the Border Patrol's new operation to combat illegal immigration, began last week. More than 1,500 suspected illegal immigrants were caught in two airports and along Interstate 10. Agents seized 500 smugglers and \$750,000 worth of cash and assets. Since November 7, the operation has yielded and stopped 150 vehicles used for smuggling illegal aliens and \$478,000 worth of narcotics.

Although funding for a U.S. Border Patrol program has been approved for another year and signed into law, U.S. Rep. Henry Bonilla will ask the White House to kill the program. Under this program, illegal immigrants who are caught in Arizona are shipped to Texas and then deported.

Border Patrol officials launched the program in September in order to reduce the number of immigrant deaths in the southern Arizona desert and declared it a success after more than 6,000 undocumented Mexican immigrants were taken to the Texan cities El Paso, Del Rio, Laredo and McAllen. Only one immigrant died trying to cross the Arizona border after the program was initiated compared to 10 last year.

Texas officials oppose the program, however, saying it only transfers Arizona's illegal immigration troubles to Texas, which is a waste of tax money. Mexican and local border officials also oppose the program and are seeking an end to it.

Five people from Three Points, Arizona, have been charged with harboring two illegal immigrants and torturing one. A federal grand jury in Tucson issued a five-count indictment against Hector Soria and four others after deputies found 21-year old Roselin Rodriguez Bravo, from Mexico's Chiapas state, in a lot with several mobile homes. Bravo told police that he had been held against his will in one of the mobile homes and was ordered to reveal the phone number of the family in Florida that he was traveling to visit.

Agents also described how 19-year-old Soria tortured Bravo who was treated at University Medical Center and was released. Another unidentified and uninjured illegal immigrant was found with Bravo.

Soria and his four accomplices were charged with conspiring to harbor illegal immigrants for profit, harboring an illegal immigrant for profit and harboring an illegal immigrant for profit in which the illegal immigrant suffered serious bodily injury. Soria and one of the accomplices, Barry Van Brocklin, were also charged with conspiracy to take someone hostage.

The 28-year-old woman associated with the deaths of 19 immigrants on a May 14 smuggling incident could face life in prison. Fatima Holloway was assisting over 70 immigrants enter the US near Victoria in a tractor-trailer when the hot, crowded conditions became fatal.

Jeffrey Hudson, an agent with US immigration and Customs Enforcement testified earlier this year that Holloway is closer to a victim than a criminal in this case, as she became frightened when the immigrants began beating on the walls of the truck. It must be proven by prosecutors that a smuggler deliberately caused the deaths.

In the case of her fellow suspect Tyrone Williams and the four others charged, Attorney General John Ashcroft must decide by December 1 whether to seek the death penalty.

A subtle but significant change in the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) program could make Mexicans holding border crossing cards, or laser visas, exempt from being fingerprinted and going through identification checks every time they enter and exit the United States.

Currently, Mexican nationalists who hold laser visas must go through the US-VISIT program and are only allowed to stay in the U.S. for a maximum of 72 hours. Because the proposed change would not record entry of Mexican laser visa holders, they would also be exempt from the 72-hour rule. The reason for reevaluation is multifaceted, with reasons including the amount of commerce Mexican travelers add

to the U.S. economy as well as the differing allowances between Canadian and Mexican travelers.

About six million laser visas were issued in the past six years.

Supporters of this change in the US-VISIT program do not agree that Mexican nationalists should be viewed as potential terrorists or be put through the same travel requirements, since both countries are partners and members of NAFTA treaty. Canadians are currently allowed to stay in the U.S. for up to six months at a time.

5. News From The Courts

US v. Perez-Lopez
US Court of Appeals for the 9th Circuit
No. 02-30358 D.C. No. CR-02-00150-1-OMP

Appellant was a 39-year-old native of Mexico with a third-grade education and very limited English skills. In 2002, he entered a conditional guilty plea to a single count of producing false identification documents in violation of 18 USC § 1028(a)(1). The Court of Appeals reversed and remanded the district court's denial of the motion to suppress.

The arrest came after a search of Appellant's hotel room revealed items that could be used to make fake identification. Upon entering the room, police reported having a translator present who presented the Appellant with his *Miranda* rights, at which time he signed the *Miranda* card, as well as consented to a search of his room. Although the translator's stories varied slightly from the officer's report, the Appellant's story differed dramatically. He stated that the police pushed their way into the room without consent and told him to sign the *Miranda* card or else he would be arrested.

The District Court denied the Appellant's motion to suppress, citing the correlation of the police officer and the translator's testimony. The Court found that the Appellant signed the cards for consent and *Miranda* warnings, indicating that he had knowingly waived his rights. On appeal, Appellant claims that his motion to suppress should have been granted because (1) he gave no consent to the officers to enter his motel room; (2) his consent to their search was not voluntary; and (3) his statements at the motel were preceded by a flawed *Miranda* warning.

On the first issue, the Court of Appeals held that sufficient commonalities exist in the officer and the translator's stories to justify the district court's chosen view and it was within the district court's discretion to credit the translator's testimony that Perez-Lopez orally consented to the officers' entry.

For the second issue, the district court based its findings on the five non-exclusive factors listed in *US v. Cormier*, 220 F.3d 1103 (9th Cir. 2000). One of these factors, whether *Miranda* warnings were given, was used by the district court to demonstrate that the Appellant's consent to search voluntary. The district court had found that the *Miranda* warning made the consent voluntary, even though the *Miranda* warning was read after the search began. The Court of Appeals found the district court's reliance on the *Miranda* warnings in relation to this issue was in error. "When a *Miranda*

warning follows rather than precedes the purported consent, it cannot support the voluntariness of the consent.” The Court of Appeals remanded on this issue for the court to reconsider the validity of the search by conducting a new the “totality of all the circumstances” analysis described in *U.S. v. Schneckloth*, 412 US 218.

On the third issue, the Court held that the district court’s analysis of the sufficiency of the *Miranda* warning was also inconsistent with previous case law. The Spanish translation that was offered to the Appellant implied that a person who lacks funds is not automatically appointed an attorney, but rather must solicit the court for one.

The Court of Appeals held that the warning given to the Appellant was constitutionally infirm because it did not convey to him the government’s obligation to appoint an attorney for indigent accused. Previous courts held that the *Miranda* rights must be unambiguous. Therefore, the *Miranda* warning as interpreted by precedent led to reversal of the district court’s approval of the warning given to the Appellant. Therefore, the Appellant’s post-*Miranda* incriminating statements should have been suppressed as improperly obtained.

Bismillah Miah v. John Ashcroft

The Petitioner, Bismillah Miah, a national of Bangladesh, petitioned for review of an order of the Board of Immigration Appeals (BIA) dismissing his appeal from the Immigration Judge’s (IJ) denial of his petition for political asylum and withholding of removal. The Third Circuit Court of Appeals found that because the BIA held that the Petitioner met the burden of proof required by the IJ, the BIA should have conducted an independent corroboration analysis or remanded the case to the IJ to conduct another corroboration analysis.

The BIA instructed the IJ to consider whether several factors on remand. First, the IJ must consider whether specific corroboration of the Petitioner’s claims is credible. If the IJ does consider the corroboration credible, then the IJ must consider whether corroboration is reasonable. If so, the IJ will then need to determine whether the Petitioner presented sufficient information corroborating the relevant facts. If yes, the Petitioner has sustained his burden of proof. If not, then the IJ must determine whether the Petitioner adequately explained his failure to do so. If yes, then the Petitioner also sustains his burden of proof and is entitled to political asylum and withholding of removal.

6. Government Processing Times

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

California (11/14/2003): <http://www.visalaw.com/california.html>

Missouri (11/14/2003): <http://www.visalaw.com/missouri.html>

Vermont (11/14/2003): <http://www.visalaw.com/vermont.html>

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

7. News Bytes

NBC News investigations revealed that over the course of the last ten years, suspected terrorists have become American citizens even while under FBI investigation. Since the attacks of September 11, at least one man has been sworn in as a citizen while under FBI surveillance for his alleged ties with Hezbollah. The Department of Homeland Security maintains that the problem was a processing error that has been fixed. It is unknown how many other aliens were naturalized while under FBI investigation.

The Department of Labor created a new online H-2A case management system that is designed to improve data tracking and reporting capabilities. The system will also allow the Regional Office staff and other regulated community to enter application data. This comes as a response to a recommendation from the General Accounting Office to the Secretary of Labor to improve the H-2A program.

The Division of Foreign Labor Certification, Employment and Training Administration, and the Department of Labor will conduct a formal briefing on December 5, 2003 to demonstrate the new processing system in Monterey, California. Additional questions may be directed to Charlene Giles at 202-693-2950.

The Nebraska Service Center released information this week regarding asylee adjustment information. The asylee adjustment cut-off date currently stands at November 16, 1999 barring any further changes. This date exceeds the Center's previous expectation of February 1999.

The Center has completed the 10,000 approvals for FY2003. The Center also stated that while efforts are made to take all cases in order, if a case is not ready for review, the officers would move to the next case in order to get 10,000 approvals in a given fiscal year. However, the Center will make an effort to work cases received prior to early 1999 before working on any that came after that point.

In an effort to help detainees being held on immigration charges obtain legal aid and avoid isolation, a toll-free hotline has been set up by the New Jersey Civil Rights Defense Committee and the Council on American Islamic Relations for some county jails in New Jersey. The hotline was established so detainees would not experience isolation, as many did when more than 1,200 immigrants were arrested following the September 11 terrorist attacks.

Because most were held in New York and New Jersey, the hotline is being pioneered Passaic County Jail in Paterson, which is one of the two jails that have held the largest number of detainees in the past two years.

Previously, detainees could only get help by making expensive collect calls. Many of the prisoners do not know whom to contact, so the hotline offers a representative that will take the detainees information, assist in arranging for legal representation, and contact family members. If the call is made during off hours, the caller will be able to leave a voice-mail message, and a representative will try to contact the caller at the jail within 24 hours.

The toll-free number, 1-877-818-4845, is currently available to the detainees in Paterson, but there are plans to allow the detainees in Hudson, Bergen and Middlesex counties to access the number in the coming weeks.

November is National Adoption Month and to support it, the Departments of State and Homeland Security are working to fully implement the Hague Convention and the Intercountry Adoption Act, which ensures that the well being of adopted children remains the focal point of all intercountry adoptions.

The Departments of State and Homeland Security support the adoption processes that provide protection for the welfare and best interests of children, birth parents and adoptive parents, and work to eliminate illegal activities in the adoption process.

The first proposed regulations to put the Intercountry Adoption Act into practice were recently published in the *Federal Register* and are open for public comment until December 15, 2003.

A 40-year-old New York woman, Dezerrie Cortes, is expected to serve six months jail time for entering into 27 bogus weddings for money.

Between 1984 and 2002 Cortes married men from Pakistan, the Dominican Republic, Peru, Ecuador, Mexico and Columbia in the city clerks' offices in Queens, Manhattan, Brooklyn and the Bronx. These marriages allowed for the immigrant men to receive their green cards and other benefits.

Cortes pleaded guilty to one count of offering a false instrument for filing and will be formally sentenced on January 7.

United States Citizenship and Immigration Services is reminding immigrants who have plans to travel abroad to obtain advanced parole, which permits them to re-enter the United States after going abroad and allows for the continuation of processing for an adjustment of status to that of lawful permanent resident.

For certain immigrants who are in the process of adjusting their status, traveling outside the United States without advanced parole may be unable to return and their applications may be denied.

Even with advanced parole, however, immigrants who depart the United States after being illegally present for certain time periods can still be denied lawful permanent resident status. If unlawfully present for a time period of 180 days to less than one year, an immigrant is inadmissible to the United States for three years. If unlawfully present for one year or more, he or she is not allowed in the country for ten years. Even if an unlawfully present immigrant leaves the United States and later re-enters under a grant of parole, he or she may still be unable to adjust their status.

A recent study by the Institute of International Education has determined that in the 2002-2003 school year, foreign students made a major financial contribution to the U.S. economy. Although U.S. schools did offer support of 28.4% of tuition costs, mostly through assistance with tuition and fees in the way of scholarships and financial aid, the 586,322 foreign students that attended U.S. universities and their families made a net contribution of close to \$13 billion to the economy.

Of the 586,322 foreign students last year, 12.4% were married, totaling close to 73,000 spouses in the U.S. From these couples, there were 43,570 children living here as well. Spouses contributed an extra 25% of the student's living expenses while their children added an extra 20%. The net contribution to the U.S. economy by foreign students' dependents alone was \$479,000,000.

The states that generated the most money from foreign students were Massachusetts, California, New York and Texas. The leading field of study for foreign students in Massachusetts, California and New York was business and management, and in Texas it was engineering. The leading country of origin for foreign students in Texas, Massachusetts, New York and California were India, China, Republic of Korea and Japan, respectively.

The process of international adoption just got a little easier for prospective parents, due to the U.S. Citizenship and Immigration Services (USCIS) launching a new Child Citizenship Act (CCA) program. The program makes the process by which parents get a Certificate of Citizenship for their children easier by helping parents to more easily understand the privileges of American citizenship for their children.

The CCA program will eliminate the backlog of N-643 forms, the Application for Certificate of Citizenship in Behalf of an Adopted Child, relating to children affected by the CCA. Upcoming plans for the program call for Certificates of Citizenship to adopted children who fall within the IR-3 visa category (about 70 percent of foreign-born adopted children) to be mailed automatically to the parents within 45 days of the child's entry into the United States. The parents will neither have to file an application nor pay a fee for the certificate.

The status of thousands of adopted children in the U.S. changed from Lawful Permanent Resident to United States Citizen after the CCA of 2000 amended Section 320 of the Immigration and Nationality Act. The amendment authorized automatic citizenship for certain children upon entry into the U.S., or upon adjustment of status to that of a Lawful Permanent Resident.

A citizenship ceremony was held on November 21, 2003, in Miami for eight adopted children and their families in observance of U.S. Citizenship and Immigration Services' National Adoption Month. Certificates of citizenship were presented to the children, who ranged in age from two to 14 and were originally from the countries of India, Poland, the Peoples' Republic of China, Venezuela, Bahamas, Guatemala and Russia.

8. International Roundup

The British Government plans to introduce compulsory identity cards to protect against illegal immigration, welfare fraud and terrorism. Prime Minister Tony Blair has approved the idea in principle but his office said it would take years to resolve the many complex issues surrounding the plan. Britain is currently working on improving passports to include chips containing biometric data.

Illegal recruiters in the Philippines continue to victimize unemployed workers who end up in miserable conditions abroad and outside the government's protection. Victor Fernandez, head of the Philippines Association of Service Exporters, Inc. (Pasei), declared that the solution to this problem is for applicants to ensure the job recruitment agency is licensed or not blacklisted by the Philippine Overseas Employment administration (POEA).

However, some illegal recruiters sometimes use names of a licensed agency to recruit workers. Mr. Edgardo Mendoza, chief of the Immigration Regulation Division at the Bureau of Immigration in Manila, admits that immigration agents are also taking bribes from illegal recruitment agents.

Indonesia plans to deport a group of fourteen Kurdish asylum seekers to Turkey after the group was rejected by Australia. The International Organization for Migration has been caring for the Kurds at a lodge in the Yamdena fishing village of Saunlaki.

An influx of Muslim immigration to Italy, which is 80% Catholic, is rapidly changing its cultural makeup and creating religious tension between the two groups. Islam has become the country's second-largest religion, with approximately 700,000 to 1,000,000 Muslims among a total population of 57 million. Unlike other religious communities, Italy's Muslims have yet to be formally recognized. Other religions have signed agreements with the government, giving them official recognition and the opportunity to benefit from a national "religion tax."

The tension between the Catholics and Muslims in Italy was apparent last month when a judge ruled that crucifixes in schools should be removed from classroom walls out of respect for Muslim pupils.

In recent weeks, Italy's far-right Alleanza Nazionale has called for immigrants to be given the vote. But the Muslim vote still faces strong opposition from parts of the Prime Minister's coalition government.

Bhutan and Nepal are trying to find a solution for the Bhutanese refugees issue. The Bhutanese refugees, mostly of Nepalese descent, were displaced during the 1990s when the government tried to impose cultural reforms by encouraging the use of its national language and dress. While the refugees insist that they were forced to leave, the Bhutan government says the refugees left voluntarily.

Bhutan fears that the return of the refugees would change the demography of the country and the country might lose its identity. It also fears the refugees' preference of multiparty democracy over a constitutional monarchy.

If the agreement reached in the two-day meeting between Bhutan and Nepal landmark is implemented, it might result in the repatriation of a major section of refugees and the settling of remaining ones in Nepal by granting them Nepalese citizenship.

In 1996, the Malaysian government initiated a process for legalizing undocumented migrant workers already in the country. Its freeze on the intake of overseas labor soon followed. Before this bar, 350,000 Bangladeshis had been legally working in Malaysia and there were about 50,000-60,000 undocumented workers. This made Malaysia the country who received the second highest number of Bangladeshi workers.

Currently, Malaysia is expected to sign a memorandum of understanding with Bangladesh, lifting its seven-year long freeze on taking in labor from that country. Malaysia wants Bangladesh to ensure low migration cost and district selection of labor suitable to the job requirements.

9. Legislative Update

The following bills were recently introduced in Congress:

[H.RES.440](#): Providing that the executive branch should remove certain entry restrictions for Mexican nationals, and for other purposes.
Sponsor: Rep Ortiz, Solomon P. [TX-27] (introduced 11/14/2003)
Committees: House Judiciary
Latest Major Action: 11/14/2003 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

[H.R.3488](#): To allow certain Mexican nationals to be admitted as nonimmigrant visitors for a period of 6 months.
Sponsor: Rep Hinojosa, Ruben [TX-15] (introduced 11/14/2003)

Committees: House Judiciary

Latest Major Action: 11/14/2003 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

[H.R.3510](#): To designate Angola under section 244 of the Immigration and Nationality Act in order to make nationals of Angola eligible for temporary protected status under such section.

Sponsor: Rep Lynch, Stephen F. [MA-9] (introduced 11/18/2003)

Committees: House Judiciary

Latest Major Action: 11/18/2003 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

[S.1869](#): A private bill for the relief of Robert Kuan Liang and Chun-Mei Hsu-Liang

Sponsor: Sen Feinstein, Dianne [CA] (introduced 11/17/2003)

Committees: Senate Judiciary

Latest Major Action: 11/17/2003 Referred to Senate committee. Status: Read twice and referred to the Committee on the Judiciary.

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

10. Reports Say the End of Special Registration is Near

The Department of Homeland Security is preparing to end the Special Registration program, according to reports by the Washington Post. Government sources say a decision to end the program will likely be announced any day.

The possible decision to end the program comes at the start of the second round of registration for individuals from 25 predominately Muslim nations. Immigration attorneys have argued that failure to publicize the re-registration period will put thousands of individuals at risk for deportation. In addition, reports indicate that the Department of Homeland Security views the special registration program as ineffective and a waste of limited resources.

The program, which primarily affects Muslim men, caused confusion and protests earlier this year after thousands of people were arrested or ordered deported following registering with the federal government. Opponents of the program claim that the system, which has been a further effort by the federal government to discriminate against Muslim men, alienates law-abiding Muslim citizens, making them more distrustful of the US government.

The program also requires those who remain in the country to register again within 10 days of the one-year anniversary of their first appointment. This part of the program has created problems for visitors who are unaware of the requirement. The ACLU argues that the government often does not notify visitors of the second appointment and the government does not publicize this requirement. Immigration officials claim that visitors are always duly informed of impending deadlines.

The program began in November 2002 with a series of rolling deadlines. The first registrations began Nov. 15, 2002, for visitors from countries that the State

Department has designated sponsors of terrorism, Iran, Iraq, Libya, Sudan and Syria. Immigration officials do not know how many people have re-registered this year, believing that many have or will leave the country before the Nov. 25 deadline.

Out of the more than 83,000 visitors who registered, nearly 14,000 foreign nationals were deported, with dozens of criminals identified but only seven people with possible ties to terrorism.

11. Study Shows Foreign-born Nurses Ease National Nursing Shortage

Foreign-born nurses, as well as married nurses over age 50, are easing the national nursing shortage that has affected American hospitals since 1998, according to a study that appeared in the November/December issue of the Journal of Health Affairs. 104,000 nurses entered the work force last year, and researchers cite reasons such as rising nurse wages and a slow national economic status for this boom. Nearly one-third of these new nurses are immigrants.

The study found that the high demand for hospital nurses increased rates of pay by nearly 5 percent, which is double the wage increase for nurses working outside of hospitals.

In New Jersey, for example, statistics from the Hospital Association show the nurse vacancy rate has fallen from 13.5 percent during the period from January to June of 2002 to 8.94 percent the same time period this year. Nurse turnover has also decreased.

The rise in hospital nurses can be attributed to the incentives and benefits that are offered to them. These can include tuition reimbursement, on-site childcare, flexible scheduling, assistance with caring for elderly parents, and a salary increase of about 25 percent over the past two years.

Many registered nurses are now applying for employment after being absent from the work force for long time periods.

A detrimental situation may arise if this trend continues, the study advises. The demand for registered nurses is expected to increase over the next 20 years, with the number of older nurses peaking in 2010. However, after that time most of these nurses are expected to retire, potentially triggering a major nursing shortage.

In the meantime, nursing schools are having to turn many applicants away because of limited budgets and the inability to accept more students, despite an increasing number of applications.

12. J-1 Training Program Allowed to Resume Operations

The American Hospitality Academy will be allowed to resume bringing foreign students to the United States following the reversal of a previous State Department

panel decision. The unanimous vote to allow the South Carolina firm to resume training the students in the hospitality industry came after a court ruling last week that was critical of the State Department's decision to bar the AHA's participation in the J-1 exchange program.

After bringing hundreds of foreign students to the US for up to one year under the J-1 program, State Department officials ended the program on April 1 claiming that the AHA was running a work program instead of a training program. The State Department's conclusion came after an inspector found 14 program violations.

The recent court decision followed hearings that were ordered nearly a year ago by a U.S. District Judge who believed that the State Department's initial action was extreme. At the hearings, which were held in May, the State Department tried to explain the charges that had led to the revocation. While the AHA admitted violations of eight program rules, the State Department now concludes that these items were not sufficient to warrant revocation.

The AHA, which operates in South Carolina and Orlando, Fla., began operation in 1998. In turn, the students were given a \$300-a-month stipend. AHA collected \$1,300 to \$1,600 a month from hotels and resorts for each assigned trainee.

AHA lawyers are preparing to meet with State Department officials to determine how to get the program back into operation.

13. DHS Employee Accused of Selling False Documents

A Miami Department of Homeland Security employee was arrested for allegedly trafficking in immigration documents and selling fraudulent Employment Authorization Documents, or EAD cards. EAD cards are required for non-U.S. citizens to work in the United States.

Federal agents arrested Isidro Guerrero Fernandez in Georgia on November 12. He was in Georgia to train to become a Homeland Security special agent, a program he had started on November 6.

In the U.S. Attorney for the Southern District of Florida's criminal complaint, Guerrero is accused of charging immigrants between \$6,500 and \$12,000 for an EAD card that can be obtained legally for about \$110.

Guerrero had worked at the Miami office of U.S. Citizenship and Immigration Services since March 1998 and transferred to the Employment Authorization Documents department in April 2002.

According to the complaint, Guerrero worked with a Chilean man, Miguel Raggio, who would allegedly meet the immigrants at a nearby restaurant and take them to the CIS building. Guerrero would then take the immigrants to illegally obtain their EAD cards.

Several unidentified immigrants' reports of illegal card sales instigated an investigation on Guerrero. They told officials that Raggio would take an immigrant's

passport along with an initial payment and later meet them at a restaurant to collect the final payment. Agents observed Guerrero meet with several people to give them cards, and they stopped Raggio on November 12 after he met with someone who gave him \$16,000 in down payments, according to the complaint.

Raggio admitted to agents that he was working with Guerrero after they found four legal pads with names of foreigners, their registration numbers and several printouts of names with dollar figures next to them. After monitoring a phone call between the two men and recording a discussion about Guerrero driving to Miami to collect the payments, agents arrested the 32-year-old man at the Federal Law Enforcement Training Center in Glynco, Georgia.

The government has charged Guerrero with conspiring with others to knowingly transfer false federal identification documents, illegally obtaining the Employment Authorization Documents, and soliciting and accepting bribes while being a public official.

It is unknown if Raggio was arrested, although he has previously been convicted of entering the United States illegally and has twice been deported.

Guerrero made his initial appearance in a Brunswick, Georgia, federal court on November 13.

14. Congressman Tancredo Introduces Guest Worker Bill

Last week, Congressman Tom Tancredo (R-CO) introduced a guest worker bill that is intended to ensure border security through additional Border Patrol, Bureau of Customs and Border Protection, and Bureau of Immigration and Customs Enforcement agents.

Tancredo, Chairman of the Immigration Reform Caucus, announced that the Border Enforcement and Revolving Employment to Assist Laborers (BE REAL) Act of 2003 "is beneficial to both the United States and to those seeking better economic opportunity from their home countries."

Tancredo said in a press release that BE REAL Act would provide a true guest worker program for immigrants while allowing all industries the ability to hire as many temporary legal immigrants as necessary.

In addition to adding more border agents and facilities, the bill prohibits agents from engaging in racial profiling. However, they may consider such factors as mannerisms, appearance, language, behavior and location. In a further effort curb immigration violations, the BE REAL Act will increase the civil and criminal penalties for overstaying visas by 30 days or more, document fraud and false claims of citizenship. All visa waiver programs would be suspended until DHS certifies to Congress that an automated entry-exit system is fully implemented and functional, all ports of entry have functional biometric machine readers and all participating countries issue machine-readable, biometric passports.

In order to remove the incentives to illegal migration, Tancredo's bill requires the Secretary of DHS to create a national mandatory electronic employment eligibility verification system and to use such verification as a defense against employer sanctions. Employers would be required to obtain either a social security number or an alien number from each new hire.

The BE REAL Act calls for a guest worker program that would replace all current H nonimmigrant visa with a single H nonimmigrant visa for immigrants coming to the United States temporarily to perform skilled or unskilled work for which no U.S. citizens or legal permanent residents are available or qualified. The guest worker program would also require that the Department of Labor create an Internet-based job posting system to which all U.S. employment agencies and businesses may acquire password-protected access so that they can post available jobs on the system. The Department of Labor would be prohibited from approving any labor certification applications in any industry and geographic region if the unemployment rate exceeds five percent and the percentage of new hires who are H non-immigrants exceeds 15 percent.

The guest worker program would go into effect only after the Secretary of the DHS approves all prerequisites, including that both the entry-exit system and the electronic employment verification system are fully implemented and functional.