

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

Dear Readers:

We hope you will find this week's newsletter helpful and interesting. In our ABCs of Immigration article, we cover a topic about which we frequently receive questions - Social Security numbers for foreign nationals in the US.

In addition to our regular features, we also report on the latest immigration news. The extension of the religious worker green card category is now almost a given now that Congress has passed legislation approving the programs for five more years. President Bush is expected to sign the bill soon. The General Accounting Office issued a report this week calling for better tracking of the H-1B program to determine whether it is helping or hurting the US economy. US Citizenship and Immigration Services (formerly BCIS and before that the INS) announced that it will soon be raising immigration application fees.

Chris Nugent, an immigration lawyer in Washington who I used to work with when I served as a member of the ABA's Coordinating Committee on Immigration Law and Chris was an ABA employee, informed me of a very interesting deportation fight he's waging on behalf of mentally retarded young man. We cover the story this week and wish Chris well in what sounds like a very worthy cause.

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

Regards,

Greg Siskind

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## 2. The ABC's Of Immigration – Assignment Of Social Security Numbers

The Social Security Administration (SSA) has recently implemented some changes involving the issuance of Social Security numbers. Among those changes, the SSA limited the scope of "valid nonwork reason", removed evidentiary waivers for children under age seven, and extended in-person interviews to all individuals over age 12. The new regulations will go into effect October 27, 2003.

### **Who can apply for a Social Security number?**

The Social Security Administration (SSA) gives cards to individuals who are U.S. citizens or non-citizens who are lawfully admitted to the U.S. for permanent residence, or who have permission from the Department of Homeland Security (DHS) record to work permanently in the United States, such as refugees, asylees, work visa holders and citizens of Compact of Free Association countries.

### **What is a "valid nonwork purpose"?**

Previously, the SSA issued social security numbers for some "valid nonwork purposes", such as obtaining a driver's license. Under the updated regulations, a "valid nonwork purpose" under Sec. 422.104 will be those instances when a Federal statute or regulation requires an alien to have an SSN in order to receive a federally-funded benefit to which the alien has otherwise established entitlement, or when a

State or local law requires an alien who is legally in the U.S. to have an SSN in order to receive general public assistance benefits to which the alien has otherwise established entitlement. Therefore, the SSA will no longer assign an SSN to an alien for any nonwork purpose other than to receive Federal, State, or local benefits as described in Sec. 422.104.

The Social Security Administration responded to concerns about individuals not being able to get a SSN in order to obtain a driver's license by saying that this will no longer be "valid nonwork reason". The SSA decided to change its policy because fraud and misuse regarding SSNs for nonwork purposes has been almost exclusively in relation to SSNs issue for driver licensing. In addition, many states have altered their requirements to not require a Social Security card in order to obtain the license.

### **What are the requirements for applicants under 18?**

Previously, a child under age seven did not have to provide any evidence of identity and any child under the age of 18 was not required to do an in-person interview. However, the new rules eliminate the waiver of evidence of identity for children under age 7 who are applying for an original SSN card. Also, an in-person interview will be required of all individuals age 12 or older who are applying for an original SSN. The goal of this early interview age is to prevent obtaining social security cards through fraudulent means. The SSA also reasoned that children need social security numbers at an early age in order to receive benefits and to be reported on income tax returns. However, the agency decided to set the threshold age at 12 because they felt that requiring the presence of younger children at in-person interviews would be overly burdensome on the children and unproductive for the SSA.

In addition, evidence of identity must contain sufficient biographical or physical information to identify the individual. The SSA determined that birth certificates would not be sufficient to establish identity due to problems with fraudulent documentation. The applicant will need evidence such as a medical record or a school record in order to establish identity.

### **How can an immigrant apply for a Social Security number while applying for an immigrant visa?**

Non-citizens applying to enter the United States can apply for a Social Security as part of the immigrant visa application. In order to do this, the applicant must be 18 or older when they enter the United States and must be a lawfully admitted permanent resident. When filling out Form DS-230, the Application for Immigrant Visa and Alien Registration, the applicant must answer "yes" to questions 33a and 33b. Question 33a simply states that the applicant wants the Social Security Administration to assign a Social Security number and issue a card. Question 33b authorizes disclosure of Form DS-230 to the Bureau of Citizenship and Immigration Services, the Social Security Administration, and any other government agencies that may be needed in order to get a Social Security number.

According to the Social Security Administration, once the applicant arrives in the U.S., a Social Security card should arrive at their mailing address in about three weeks. If the applicant changes their mailing address after arriving but prior to receiving their card, they must call the Social Security Administration.

### **What if the immigrant does not meet the requirements to apply for a SSN while applying for a visa, or the immigrant simply failed to do so?**

If the applicant did not request a Social Security number as part of the visa application or the applicant did but was under age 18, he or she must apply for a card at a Social Security office. When the applicant has a permanent address, he or she can go to the nearest SSA office. The applicant can go to the SSA website to find an office at [www.socialsecurity.gov](http://www.socialsecurity.gov) or can call Social Security's toll-free number, 1-800-772-1213, Monday through Friday between 7 a.m. and 7 p.m. (Eastern time).

When the applicant visits the Social Security office to apply for a Social Security card, he or she should take the following original documents for each family member applying for a number:

1. The passport or travel document
2. Permanent Resident Card (Form I-551), if he or she has received it
3. Birth record
4. I-94, Arrival/Departure Record

When the applicant arrives at the SSA office, he or she should complete the SS-5, or Application for a Social Security Card. In addition, all documents must be either originals or copies certified by the issuing agency. Photocopies and notarized copies of documents are not acceptable.

Someone at the office will help the applicant complete the application. The applicant should then receive the card in about two weeks after the SSA has everything that it needs to process the application. However, if the SSA has to verify any document with the issuing agency, it may take longer to receive the card.

### **The applicant was issued a card that says "not valid for employment" when they first applied, but now the Department of Homeland Security has given them work permission. What should they do?**

If the Department of Homeland Security (DHS) has granted the applicant permission to work, the applicant needs to apply for a replacement card without the legend "Not Valid for Employment". The replacement card will have the same number as the current card.

To apply for a replacement card, he or she needs to complete Form SS-5, which is available for download at <http://www.socialsecurity.gov/online/ss-5.html>. The applicant may get a Form SS-5 by calling 1-800-772-1213 or visiting the local Social Security office. The applicant must submit Form SS-5 with evidence of identity and current authorization to work from the DHS. All documents must be either originals or copies certified by the issuing agency. The SSA cannot accept photocopies of documents.

If the applicant is a non-citizen, the SSA must verify the documents with the DHS before issuing a replacement SSN card. The SSA will issue the card within two days of receiving verification from DHS.

### **How much does a Social Security card cost?**

The Social Security Administration does not charge a fee to assign a Social Security number or issue a Social Security card. The SSA will replace the card for free if the card is lost.

**Does the applicant need to have a Social Security number before starting work?**

The SSA does not require a SSN before the applicant starts to work, but the Internal Revenue Service requires employers to report wages using the Social Security number. While the applicant waits for his or her Social Security number, their employer can use a letter from the SSA stating the applicant has applied for a number.

**Do foreign students who are studying in the U.S. have to have a Social Security number?**

Foreign student who are temporarily studying in the United States do not have to have a Social Security number. Schools are not authorized to use the SSN in administering educational programs, so when the student does not have an SSN or prefers not to provide his/her SSN, the school assigns the student an internal number. A school policy to require an SSN to enroll in school or college is not a valid non-work reason to assign an SSN to an individual who does not otherwise meet SSA's requirements for an SSN. Note that an SSN is needed to engage in employment on campus.

**If a foreign student works in the U.S. does he or she have to pay Social Security?**

Work performed by some non-resident aliens who visit the United States for a limited period of time is not covered by Social Security and, therefore, not subject to Social Security taxes. F-1, J-1 and M-1 visa holders working in connection to their studies or for the purpose of their visit to the U.S. are not covered by Social Security. This means that there will be no withholding of Social Security or Medicare taxes from the pay received for these services. These types of services are very limited, and generally include only on-campus work, practical training, and economic hardship employment. For more information on taxation, visit the Internal Revenue Service at [www.irs.gov](http://www.irs.gov).

**How can I contact the Social Security Administration?**

In the United States, call the telephone number listed for the Social Security office in the local telephone directory under "United States Government" or Social Security's toll-free number, 1-800-772-1213. To locate an office or for more information on Social Security numbers, go to the Social Security Administration's homepage: [www.socialsecurity.gov](http://www.socialsecurity.gov). If you need to contact SSA before you leave for the United States, the SSA is assisted outside the United States by United States embassies and consulates throughout the world.

*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 - I was detained by the INS a few months ago. Bail was set at \$5000. My best friend paid this amount and bailed me out. After my release I reimbursed him. At my hearing I requested the judge grant me Voluntary Departure. My request was granted. The judge did not mention anything about a Voluntary Departure Bond to be posted.

The Immigration Bond papers that we have state that the bond was "Conditioned upon Delivery of an Alien". My understanding is that now my friend can apply for a refund of the bond since the Delivery Bond has been fulfilled and I do not have to go to any future court hearings. Please let me know if this is true or does a delivery bond automatically turn into a Volunatry Departure bond after a court order? If it does not covert then he should be able to get a refund if I am right.

A - The delivery bond does not automatically convert to a voluntary departure bond. In fact, you have to get government to agree to that sometimes if you cannot post the second bond. Also, the immigration judge would have had to set a voluntary departure bond.

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Q - I'm a foreign student in Canada that just got a US green card. What should I do if I want to continue my education in Canada rather than in US?

A - It is possible to continue your education in Canada but not lose your greencard. To do that, you need to show that your intention is to reside in the US, and you are in Canada only to finish your studies. It is a very subjective thing to prove. You may want to travel to US frequently using your greencard, get a US driver's license, open a bank account obtain a Social Security Number, and perhaps start getting US jobs in your school breaks. A greencard is a permanent residency and if the immigration thinks that you are not residing in the US then they can revoke it. You might find the article on our web site at <http://www.visalaw.com/01jan4/12jan401.html> helpful.

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Q - How can I change my B2 status to F1 status without going back to my home country? Can I get an F-1 visa in Mexico or Canada?

A - You may be able to apply for an F-1 visa at some of the Consulates in Canada or Mexico. But you need to check to see who will take your case. Most of them will not take B-2 to F-1 applications unless the person is annotated as a "prospective student". Check [www.travel.state.gov](http://www.travel.state.gov) for links to US consulates.

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Q - I am an International Student from India studying in Canada. My Student Visa and Authorization here has expired. It expired on the 13th of September this year. Instead of getting it restored I want to move to the United States for the last year of my studies. I have got an I-20 from a school there. I have 90 days to leave Canada or apply for the restoration of my status here. I have a 10 years multiple B1/B2 visa and have been regularly coming and leaving USA for the last 1 1/2 years now. If I go with the proper documents to the border will I be allowed to go in as a PROSPECTIVE STUDENT and then allowed to apply for a F1 visa?

A - It may be possible to enter as a prospective student, but the chances are very slim. If you already have an I-20, and if you know the school that you would attend in the Spring semester, you are probably better off applying for an F-1 visa in Canada and entering 30 days before your school starts. If that is not feasible, you may want to enter with a tourist visa, and then a month before your school starts, you may want to return to Canada or to your home country to apply for an F-1 visa. But most immigration lawyers would likely recommend getting the F-1 visa at the outset.

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Q - I had been on H-1B visa for 2.5 years and then changed to a J visa. Now after being on a J-visa, I am on the verge of converting to a H-1B again. Will I now have a fresh/new 6 years on my new H-1B OR will I have only 3.5 years. In other words, will my old H-1 years be counted towards the total duration of my H-1. I will truly appreciate your response.

A - Unless you departed the US for a year, you're still going to be using up the original six year limit.

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Q - I am a recent MBA graduate on an employment card searching for employment in the U.S. I qualify for lots of positions and get invited to various interviews. However, as soon as companies find out I need a sponsorship in the future, they turn me down. I am sure that there is a trick to properly presenting my situation. Could you recommend an approach to better handling this situation? What should I tell them and when (up-front, or later after they get to know me?)

A - First, I would not bring up your immigration status until asked. An employer who learns that he needs to sponsor you right away may not bother to even consider you. But if an employer has a chance to get to know you, it will be less likely that they will reject you on this ground alone. If you are not in the strongest bargaining position, you can do a few other things that will help:

1. Let them know you have an immigration lawyer and would be happy to have the lawyer explain the process so that there are no mysteries.
2. Let them know you will pay your legal and filing fees (to the extent permitted by law) yourself.
3. Let them know you will pay to premium process your case so you will only have to wait a few weeks for the visa (assuming H-1Bs are available and not capped out).

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#### 4. Border News

A U.S. Border Patrol agent shot the driver of a car carrying undocumented immigrants this weekend after the motorist tried to run him over, police said.

The driver suffered a gunshot wound to his thigh and was detained by Mexican police at a Tijuana hospital. Contrary to earlier reports, the Border Patrol agent was not injured.

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A new bill would make it easier for Haitians to become permanent residents and avoid deportation while their applications are processed. HR 3238, introduced by Rep Kendrick Meek, D-FL, expands on changes in immigration law made by the Haitian Refugee Immigration Fairness Improvement Act, which was sponsored by Meek's mother, former Rep. Carrie Meek, in 1998. That law allowed Haitians who arrived in the United States before 1996 to become permanent residents. The bill would block the deportation of any Haitian who has an application pending. It would also include children who became adults before their applications could be considered.

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Having resolved an internal battle over a Canada-U.S. refugee agreement clearing the way for implementation of the "safe-third pact" in early 2004, Department Of Homeland Security Secretary Tom Ridge met in Toronto with Deputy Prime Minister John Manley last week. They announced an expansion of post-Sept. 11 programs to speed the cross-border movement of goods and travelers. The safe-third agreement will force refugee claimants who travel to the US-Canadian border to file for asylum in the first country the individual entered, rather than allowing them to choose between the US or Canadian system.

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US immigration officials have released details of a special registration program that tracked foreign visitors in the United States following the Sept. 11 terrorist attacks. Special registration required males 16 and older from 25 countries to register with immigration officials. Those who failed to register risked fines, detention, arrest or deportation. In total, 83,310 foreign visitors to the U.S. registered, and nearly 3,000 people were detained. The Special Registration program ended in March, but DHS officials plan to track the arrival and departure of foreign visitors to the United States at all points of entry by 2006.

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#### 5. News From The Courts

##### **Correa v. Pasquarell**

This case was decided in the United States District Court for the Western District of Texas, San Antonio Division.

The matter arose when Mr. Raul Correa, an American citizen, filed an I-130 petition for his wife Dina. A citizen or lawful permanent resident of the United States files this form to establish the relationship to the alien relative who wishes to immigrate to the United States. For instance, a U.S. citizen husband may file for his non-citizen wife. The INS denied Mr. Correa's petition for his wife, informing the couple in a letter that their "marriage possesses a negative element of such extreme gravity that it tends, in and of itself, to demonstrate that it is fraudulent." This was because the INS determined that Mr. And Mrs. Correa were homosexual and therefore could not have entered into a valid marriage. This conclusion was based mainly on an investigation conducted by the INS.

In their investigation, the INS had found that Mr. Correa "shares a bedroom not with his wife, but with Mr. Riki Korb, who is the brother of his wife. This bedroom ...contains his clothing and other personal belongings, Mr. Korb's clothing and other personal articles, but no clothing or other personal articles of the wife. The wife shares a bedroom containing one bed with a Ms. Limor Levi Korb. This bedroom ...contains the wife's clothing and other personal articles..." The letter stated that there was reasonable doubt as to the bona fides of the marriage and asked for submission of any evidence that would support the contention that the marriage was bona fide. After submission of affidavits and statements, the INS rejected the petition. Mr. and Mrs. Correa appealed.

While the appeal was pending, on February 14, 1995, Mr. Correa died of complications relating to AIDS. In April of 1995, the INS moved to dismiss the appeal on the ground that, upon Mr. Correa's death, Mr. Correa (the plaintiff) was no longer entitled to immediate relative status as the spouse of a U.S. citizen. The BIA dismissed the appeal on the ground that only Mr. Correa had standing to pursue the appeal, so upon his death, the BIA lacked jurisdiction to hear the appeal.

Mrs. Correa filed a new petition, known as I-360, as the widow of a United States citizen. Initially this petition was approved. But eleven months later, the INS notified Mrs. Correa of their intent to revoke the I-360 on the basis of their previous denial of the I-130 petition.

Mrs. Correa responded, denying the allegation that her marriage had not been bona fide. She also clarified that the appeal was dismissed without a determination on the merits as a result of Mr. Correa's death. But the INS denied her I-360 petition, stating that "the Service's reasons for wishing to revoke your petition have not been fully and sufficiently overcome."

Mrs. Correa appealed this decision to the BIA. While the appeal was pending, the INS initiated deportation proceedings against Mrs. Correa. The case then went up to District Court for the Western District of Texas as an appeal from the final determination that Mrs. Correa's I-360 widow petition should be denied.

The United States District Court for the Western District of Texas, San Antonio Division, reversed the BIA's decision. The court held that an abuse of discretion occurs when the INS decision is unsupported by reasonable, substantial evidence on the record considered as a whole. Under the abuse of discretion standard applicable in appeals from discretionary INS actions, the Service must "announce its decisions in terms sufficient to enable a reviewing court to perceive that it has heard and thought and not merely acted."

The court found the INS investigation and findings on Mrs. Correa's sexual orientation dubious. The court found the record of the findings ambiguous, at best. The INS investigators had just made some cursory observations about where they assumed the people occupying the house slept; they did not ask any questions; they never opened any drawers or dressers; and they did not ask for any explanations of what they found to be suspicious. The court also dismissed allegations by the INS that wedding photographs of Mr. and Mrs. Correa were not verifiable. The court also held that the tax returns for the previous years, which were "married filing separately," proved nothing as to lack of bona fides of the marriage.

The court held that because there were issues of fact in dispute between the parties in this case, a motion to dismiss by the INS would not be proper in this case. When there are issues of fact in dispute, the INS's "motion to dismiss, construed as a motion for summary judgment, is denied."

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### **Ramos v. Ashcroft**

This case, a class action, was decided by the United States District Court for the Northern District of Illinois Eastern Division. The plaintiffs claimed that the acceptance and processing of their INS forms I-485, Application for Adjustment of Status, was unless a visa was immediately available to the applicants, based on their I-130 applications. Subsequent to the processing of the I-485 applications, the Chicago office relied on the information in the I-485 applications for adjustment of status to initiate investigations and removal proceedings against unsuccessful applicants.

Under § 245(i) of the INA, which was applicable to these class members, a qualifying family member could file an Immigrant Visa Petition (I-130) on behalf of the immigrant relative who sought lawful status. If the INS approved the petition, then the immigrant relative, who may have been unlawfully present, could submit the Application for Adjustment of Status (I-485).

The plaintiffs asserted that the statute and regulations required a visa to be immediately available under an approved I-130 application, before an I-485 application for Adjustment of Status could be processed. The defendant contended that there is no such prerequisite for processing the applications. Plaintiffs also argued that the defendants cannot rely on the information in the I-485 applications for Adjustment of Status to open an investigation against them.

The defendant challenged the district court's subject matter jurisdiction to review this case, claiming that it was barred by 8 U.S.C. § 1252(g). Under this section of the statute, any court's power, including the district court's power, to review cases is barred when an alien challenges the Attorney General's decision to (1) commence proceedings, (2) adjudicate cases, and (3) execute removal orders. In this case, the court found that the plaintiff's claim does not fall into the three categories articulated in § 1252(g).

The defendant claimed that once the Attorney General initiated removal proceedings, subsequent to alleged improper processing of the I-485, plaintiffs could no longer challenge them.

The court held that the plaintiffs were challenging the procedures which related to the acceptance and processing of the I-485 applications, and they are not challenging the adjudication and denial of their applications. Therefore, § 1252(g) did not apply to the present case, and so the plaintiff's challenge was not improper. In other words, § 1252(g) applied to the merits of the case and not the procedural steps involved.

The court also held that § 1252(g) bars aliens who are in proceedings from challenging the commencement of proceedings against them, but permits the same aliens to challenge the decision of the Attorney General to open an investigation. The court held that the present case did not qualify as a challenge to the adjudication of the plaintiff's adjustment of status application and so was not barred by § 1252(g). Therefore, the court denied the 12(b)(1) motion to dismiss for lack of subject matter jurisdiction and allowed the case to proceed forward.

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#### 6. Government Processing Times

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

Nebraska (10-1-2003): <http://www.visalaw.com/nebraska.html>

Texas (9-30-2003): <http://www.visalaw.com/texas.html>

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

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#### 7. News Bytes

Department Of Homeland Security spokesman Dan Kane sent out a brief release to the media this week reminding the public of the immigration agency's name change. "Please be aware that our new branding name is: U.S. Citizenship and Immigration Services (CIS). We will no longer use the name: Bureau of Citizenship and Immigration Services. This name change is part of our evolutionary process as a new agency."

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According to spokesmen for the National Association of Foreign Student Advisors (NAFSA), the DHS will be releasing a proposed rule on collection methods for the SEVIS fee within the next 2-3 weeks, with a 30-day comment period. Officials indicated the fee will be near the statutory maximum (\$100), but the DHS has not decided when it will begin collecting the fee.

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The Legal Services Corporation has inserted a final rule in the federal register in which it revises the appendix to its regulations on restrictions on legal assistance to aliens. Recipients of Legal Services Corporation funds are permitted by law to provide legal assistance only to U.S. citizens and certain legal aliens. Recipients are

required to verify the eligibility of non-U.S. citizen applicants for legal assistance by seeing documentary proof of the applicant's status. The appendix sets forth a listing of documents upon which recipients may rely to verify the eligibility of non-U.S. citizens' applications for legal assistance from LSC-funded programs:

<http://frwebgate4.access.gpo.gov/cgi-bin/waisgate.cgi?WALSdocID=5530773636+1+0+0&WALSaction=retrieve>

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President Bush signed the first ever homeland security appropriations bill last week. The Department's budget for Fiscal Year 2004 totals \$37.6 billion, which includes \$7.2 billion generated by fees. Itemized expenses include:

\$1.8 billion for CIS, an increase of 9% over last year (this figure includes \$1.6 billion in projected fee revenues)

\$330 million for the US Visitor and Immigrant Status Indicator Technology (US VISIT)

\$41 million for 570 new Border Patrol Agents

\$35.2 million for air surveillance of the Northern Border

\$6.5 million for 51 new ICE Agents

The DHS's FY 2004 Budget Fact Sheet is available online at:

<http://www.dhs.gov/dhspublic/display?theme=47&content=426>

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The Executive Office for Immigration Review (EOIR) announced last week that notices have been sent to individuals with conditional grants of asylum based on resistance to a coercive population control program (CPC). The beneficiaries are fully eligible for all asylum benefits, along with their spouses and children if they were properly included in the application for asylum (Form I-589) as dependents and if they reside in the United States. The EOIR's release can be viewed online at:

<http://www.usdoj.gov/eoir/press/03/CPCAsylumRelease0903.pdf>

The EOIR also released an asylum fact sheet that gives a background on the CPC program, which is limited to 1,000 individuals per fiscal year. The EOIR and USCIS have the authority to grant asylum, and the two agencies work in coordination to ensure that all 1,000 approvals are issued and that the cap is not exceeded. The fact sheet is available on line at:

<http://www.usdoj.gov/eoir/press/03/CPCAsylumFactSheet0930.pdf>

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USCIS has resumed processing applications for adoption and emigration of orphans, which had been suspended in accordance with Guatemala's attempt to implement the Hague Convention on International Adoptions. The Constitutional Court of Guatemala deemed the implementation unconstitutional last month, but the Guatemala government is pursuing alternative implementation measures. The Department of State advises prospective adoptive parents to be aware of uncertainties regarding Guatemala's implementation of the Hague Convention, and delays can be expected. Status updates are available at the embassy website:

<http://usembassy.state.gov/guatemala/wwwhadoe>

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USCIS Acting Associate Director William Yates sent a memo to regional directors recently that verifies the eligibility of children born out of wedlock for derivative citizenship.

"The question has arisen whether a child born out of wedlock who has not been legitimized may derive citizenship automatically under INA Section 320 or 322 through the naturalization of the child's mother. Children born out of wedlock were previously eligible for citizenship through Section 321 of the Act, which was repealed by P.L. 106-395. The CCA has no specific provision for children born-out-of-wedlock. The legacy-INS requested a legal opinion from the DOJ Office of Legal Counsel (OLC) on the issue of whether a child born out of wedlock who has not been legitimized may derive citizenship under CCA. The CIS received the opinion on July 24, 2003, in which the OLC stated that a child born out of wedlock who has not been legitimized may derive citizenship through his or her naturalizing mother under the CCA."

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Another Yates memo to regional directors recently obtained discusses new guidelines for Service Centers when exercising their authority to issue Form I-862, Notice to Appear (NTA), and is a reminder of the existing principles that govern decisions to exercise prosecutorial discretion when adjudicating benefits applications. The NTA can be issued in:

All cases where the alien's violation of the Immigration and Nationality Act (INA), and/or Federal, State or local statutes and codes constitutes a threat to public safety or national security;

Instances where fraud scheme has been detected;

Certain applications for Temporary Protected Status (TPS) where the basis for denial or withdrawal constitutes a ground of deportability or excludability.

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In June, USCIS launched its national call center with a toll-free number for customers with questions regarding immigration services and applications. Mostly contract employees staff the national call center, as opposed to local customer service centers staffed by federal employees. As a result, customer service has suffered. An American Immigration Lawyers Association survey revealed that 60% of respondents were dissatisfied with the lack of "meaningful assistance" provided by call center employees, which do not receive the same training as immigration officers.

A USCIS spokesman has said that overall, USCIS is satisfied with service, and in its own survey, found that 80% of respondents were satisfied as well. The national call center allows customers to receive faster answers for their questions, as those calling local service centers often receive busy signals.

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The Department of State has issued a notice to J-1 training sponsors that they are not allowed to issue Form DS-2019 to foreign nationals so that they can participate in a 'second' J-1 training program. The DOS has discovered that some organizations, especially the hotel/motel industry are requesting 'second' J-1 training programs for trainees.

J-1 training sponsors can designate any length of time for their J-1 training programs, but the program cannot exceed a total of eighteen months. (With the exception of J-1 flight trainee programs, which can last for up to twenty-four months.) If a sponsor has been designated to administer a twelve-month program, the sponsor can submit a request for an extension, but the duration of the training program cannot exceed eighteen months in total.

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## 8. International Roundup

Following the introduction of new regulations requiring visas for citizens from the Russian Federation, Ukraine and Belarus, Polish border guards say traffic at crossings on Poland's eastern border dropped between 70 and 90 percent. Officials said one section of the border that usually draws some 8,000 people was crossed by only 700 people on the first day of the implementation of visa requirements. Border Guard spokesmen said the citizens of Belarus, Russia and Ukraine simply don't have visas yet, but they are likely to get them in the near future.

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A report titled Women's Health Surveillance Report, funded by Health Canada and the Canadian Population Health Initiative, finds a decline in the health of women who immigrate to Canada; getting worse the longer they stay. Immigrant women drink less alcohol and smoke less, but they tend to take on the habits of the majority the longer they stay in Canada. The report is available online at [http://secure.cihi.ca/cihiweb/dispPage.jsp?cw\\_page=PG\\_29\\_E&cw\\_topic=29](http://secure.cihi.ca/cihiweb/dispPage.jsp?cw_page=PG_29_E&cw_topic=29)

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British Prime Minister Tony Blair has decided to support a plan to require national identity cards, shifting from his earlier position that the cards would not be particularly useful in guarding against increased security threats. Under Home Secretary David Blunkett's proposal, British residents would not be compelled to carry an ID card at all times but would have to present it within a few days if requested. Holders of a passport or driving license would not be obligated to have a separate identity card. Cabinet members Gordon Brown and Jack Straw have opposed the measure, while Health Secretary John Reid and Education Secretary Charles Clarke have backed Blunkett's plan. Addressing critics of the plan who warn of government encroachment on basic freedom, Blair said the cards would actually help protect civil liberties.

\*\*\*\*\*

Russian President Vladimir Putin is calling for a new border-protection strategy that replaces the policy of guarding the entire country with border troops with a new plan that would concentrate resources in strategic areas where Russia's national security

is threatened. Putin named international terrorism, organized crime, drug trafficking and illegal immigration as the threats, saying that, among them, terrorism was the only one that required a military line of defense. Therefore, the military element of border-protection forces will be reduced. Russia has a total of more than 61 kilometers of borders.

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Australian Prime Minister John Howard reshuffled eight key cabinet positions last week, replacing Immigration Minister Philip Ruddock with Senator Amanda Vanstone. Ruddock's reputation has been tarnished recently by a cash-for-visas scandal. More information on this story is available online at:

[http://www.theaustralian.news.com.au/common/story\\_page/0,5744,7423513%5E28737,00.html](http://www.theaustralian.news.com.au/common/story_page/0,5744,7423513%5E28737,00.html)

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## 9. Legislative Update

The following bills were recently introduced in Congress:

[H.R.3218](#): To amend the Immigration and Nationality Act to clarify that willful failure to depart from the United States by an alien against whom a final order of removal is outstanding is a continuing criminal offense, and for other purposes.

Sponsor: Rep Flake, Jeff [AZ-6] (introduced 10/1/2003)

Committees: House Judiciary

Latest Major Action: 10/1/2003 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

[H.R.3226](#): To establish commissions to review the facts and circumstances surrounding injustices suffered by European Americans, European Latin Americans, and Jewish refugees during World War II.

Sponsor: Rep Wexler, Robert [FL-19] (introduced 10/1/2003)

Committees: House Judiciary

Latest Major Action: 10/1/2003 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

[H.R.3235](#): To amend title 23, United States Code, to withhold highway funds from States that issue drivers' licenses to illegal aliens.

Sponsor: Rep Hunter, Duncan [CA-52] (introduced 10/2/2003)

Latest Major Action: 10/2/2003 Referred to House committee. Status: Referred to the House Committee on Transportation and Infrastructure.

[H.R.3238](#): To amend the Haitian Refugee Immigration Fairness Act of 1998.

Sponsor: Rep Meek, Kendrick B. [FL-17] (introduced 10/2/2003)

Committees: House Judiciary

Latest Major Action: 10/2/2003 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

[S.1691](#): A bill to establish commissions to review the facts and circumstances surrounding injustices suffered by European Americans, European Latin Americans, and Jewish refugees during World War II.

Sponsor: Sen Feingold, Russell D. [WI] (introduced 10/1/2003)

Committees: Senate Judiciary

Latest Major Action: 10/1/2003 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](http://www.visalaw.com/advocacy.html).

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#### 10. CIS Application Fees To Rise In November

Due to the costs of increased security checks, immigration officials are planning to raise fees for citizenship and other services. During the first or second week in October, certain application fees will increase by approximately \$15.00. The exact fee increases have not been decided. The new fees will take effect in November.

These increases will cover the costs for checking names and fingerprints against intelligence databases and to cover the costs of living increases. While some have criticized raising fees again with no corresponding improvements in service, defenders of the fee increase argue that the hike is needed because the fees help pay USCIS expenses and because there is no separate Congressional appropriation to help the agency. The agency is required to review and adjust its fee scale every three years, according to its financial needs.

According to USCIS, the agency is forced to raise its fees for several reasons: (1) USCIS lost approximately \$30 million after Congress eliminated the surcharge tacked onto application fees to pay for the processing of applications of refugees and asylum-seekers. This surcharge was reinstated in February. (2) The number of applicant for fee waivers has risen because immigrants cannot pay application costs. And (3) USCIS is anticipating additional costs to the agency as a result of legislation that will make becoming a citizen easier for legal residents who serve in the military.

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#### 11. Departments of State and Homeland Security Release Memorandum of Understanding Delegating Visa Authority

The Department of Homeland Security (DHS) and the Department of State (DOS) have signed a memorandum of understanding (MOU) in an effort to work cooperatively to keep the United States borders secure, while trying to ensure open channels of commerce and travel. This change was called for in section 428 of the Homeland Security Act of 2002 and will take effect with the publication of the MOU in the Federal Register.

Under the delegation of powers under the MOU, the State Department will continue to manage the visa process and the foreign policy of the U.S., while the DHS will establish and review visa policy, and ensure that homeland security requirements are fully reflected in the visa process.

The DHS and the State Department will also work to find U.S. Embassies and Consulates where additional DHS officers may also be posted. As Department of State employees, consular officers and staff who currently work on visa matters will

continue to receive direction from the Secretary of State. Consular officers will retain the responsibility for visa adjudication and issuance.

The DHS officers assigned overseas will provide expert advice to consular officers regarding security threats related to the adjudication of visa applications or classes of applications, review visa applications, and conduct investigations involving visa matters in accordance with the MOU. DHS will have final decision-making responsibilities over policy areas that include classification, admissibility and documentation; place of visa application; discontinuing granting visas to nationals of a country not accepting aliens; personal appearance; visa validity periods and multiple entry visas; the Visa Waiver Program; notices of visa denials; and processing of persons from state sponsors of terrorism.

In addition, the DOS shall provide families of the DHS employees assigned to overseas posts access to language and culture training on the same basis as the families of the employees of other agencies at the request of the DHS. The DHS, in cooperation with the State Department, will make training available for some of its employees on the different aspects of their duties at the overseas posts before they travel abroad.

Under the MOU, the State Department will continue to prescribe guidance concerning advisory opinions that may be sought by consular officers, but will consult with the Secretary of Homeland Security concerning changes in that guidance. The DOS will also continue to provide advisory opinions, including SAOs, after appropriate interagency coordination. The DHS will be copied on all advisory opinion requests.

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## 12. Senators Call For Review Of Decision To Deport Mentally Retarded Minor

Since August of this year, members of the Congressional Human Rights Caucus have called for the release of Malik Jarno from a Pennsylvania jail. Advocates for Malik Jarno, a mentally retarded youth from Guinea, state that Jarno has been subjected to "reprehensible mistreatment" by federal immigration officials.

The immigrant, Malik Jarno, now 18, arrived alone from Guinea in January of 2001 at Dulles International Airport in Herndon, Virginia. Malik, who his lawyers say is mentally retarded, has spent all but four of the last 32 months in adult jails. The lawsuit brought by Mr. Jarno's lawyers, argues that conditions at the Piedmont Regional Jail in Virginia, which is for adult detainees, reflects a lack of training and capacity to deal with detainees, particularly those with special needs. Malik has said that he was beaten by jail guards, sprayed in the face with a pepper solution, and ordered to solitary confinement.

"Piedmont prison guards have engaged in a pattern of abusive incidents against immigration detainees," the complaint notes. The complaint further mentioned that the INS had been informed of this pattern of abusive behavior, and yet their officials detained Mr. Jarno for approximately seven months. This was despite the fact that the officials knew that Mr. Jarno would be likely to face a substantial risk of serious physical and emotional injury as a result of his placement at this facility.

According to Jarno's defenders, the case has become a symbol of the hardships that thousands of unaccompanied non-adult immigrants encounter when they arrive in

the United States each year. Malik Jarno sought sanctuary from political persecution that led to the demise of his family. His lawyers claim his treatment by immigration officials represents a miscarriage of justice. His advocates note that the human rights group, Amnesty International, has found that foreign children fleeing violence and persecution in their home countries are often improperly detained for months in bleak detention centers in the United States, without access to lawyers or psychological services.

The INS had initially found that Malik was not a minor, contrary to his birth certificate. But in April 2002, the agency learned from the Guinean Embassy in the United States that the certificate was authentic and moved him to a juvenile shelter. The fact that immigration officials even contacted the Guinean government to authenticate Malik's birth certificate was in direct violation of immigration procedures intended to protect the identity of asylum seekers, according to Jarno's lawyers.

The Amnesty International report, which surveyed 33 detention centers around the country, found that illegal immigrant children who arrive in this country without caretakers are often strip-searched, shackled and housed with juveniles who have been convicted of crimes. Malik Jarno was detained in adult jails for nearly nine months before an immigration judge conducted a hearing at which the INS said he should be deported. This was despite the fact that Malik has the IQ and developmental capacity of a second grader.

Three Senators and eight members of the US House of Representatives have written on Jarno's behalf to Asa Hutchinson, the undersecretary for border and transportation security at the Department of Homeland Security, and to Eduardo Aguirre, the director of the Bureau of Citizenship and Immigration Services. In their letters they have urged the authorities to grant humanitarian parole to Malik and transfer him to the care of the International Friendship House, a nonprofit home for refugees in York, Pa, that is willing and able to take him. According to Jarno's lawyers, the home has worked with immigration officials in the past to provide housing and services to young immigrants with special needs while their cases were pending.

Jarno's lawyers have argued that legal authorities are increasingly recognizing asylum eligibility to provide protection to individuals with mental disabilities. Such individuals risk persecution on account of their membership in a cognizable, particular social group related to their immutable disability. Such determinations of eligibility for asylum are made on a case-by-case basis.

Jarno's lawyers have argued that their client should be granted humanitarian asylum based on past persecution and a reasonable possibility of serious harm that rises to the level of persecution that would warrant a traditional grant of asylum because he is highly likely to face imminent harm given his mental retardation. However, the lawyers argue now that the immigration judge, the INS, and the Board of Immigration Appeals failed to address this argument.

On August 21, the Fourth Circuit denied Malik Jarno's request for a stay of removal pending adjudication of his asylum appeal, and he is therefore immediately deportable. Persons close to this case believe that Jarno's survival is in jeopardy if he is sent back to Guinea. Three U.S. senators, Senators Edward Kennedy, Sam Brownback, and Rick Santorum have written a joint letter to Mr. Eduardo Aguirre on September 30, 2003. In their letter they have requested an immediate review of this

matter and an appropriate relief for Malik Jarno. Jarno's lawyers are also considering working with a Member of Congress to pursue a special bill that would grant permanent residency to Jarno by a special act of Congress. However, on a handful of such cases are approved by Congress each year.

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### 13. GAO Study Calls For Better Tracking Of H-1B Program To Determine Effects On U.S. Workforce

The United States General Accounting Office released a study recently on the H-1B program in which it calls for the Department of Homeland Security to implement new measures to integrate visa status data with entry and departure data and to provide clearer guidance on unemployed H-1B workers remaining in the U.S.

In the study, *Better Tracking Needed To Help Determine H-1B Program's Effects on U.S. Workforce*, the GAO sought to determine what major occupational categories H-1B beneficiaries were approved to fill, what factors affect employers' decision-making when hiring, and what the government knows about the entries, departures and status changes of H-1B workers.

Comparing recent data on H-1B beneficiaries to numbers from 2000, the GAO found that fewer visas are being approved for fields directly related to information technology, and instead the H-1B program is helping to fill positions in other areas, such as economics, accounting and biology. Over the last three years, the number of U.S. citizens employed in technology-related fields decreased, along with the number of H-1B petition approvals for these occupations, such as systems analysts and electrical engineers.

H-1B employers interviewed by the GAO said that finding workers with the skills needed in certain science-related occupations remains difficult, despite increases in unemployment. The GAO said the extent to which wage is a factor in hiring H-1B workers is unknown, but employers report recruiting, hiring and retaining employees based on skills needed, rather than the applicant's citizenship or visa status.

According to the study, the Department of Homeland Security needs to integrate the visa status data in its computer system with other data related to the entry and departure of H-1B visa holders, in order to provide complete data on the effects of the H-1B visa program on the U.S. workforce. As it stands, the DHS does not have data on the number of H-1B workers in the United States at any given time. The Department agreed with the GAO's recommendations, and new systems are being developed to improve tracking information.

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### 14. Congress Extends Permanent Residency Status For Religious Workers

A provision of immigration law regarding religious workers was supposed to "sunset" on September 30, 2003. Both houses of Congress have now passed a five-year extension of the provisions allowing certain religious workers to apply for permanent residency status. H.R. 2152/S. 1580 should become law within the next week when the bill is presented to President Bush for signature.

While extending the religious worker provision has a broad base of support, it has failed to become a permanent immigration category. Critics of the provision say it is vulnerable to fraud and fear religious extremists may use the provision to gain entry into the U.S. However, the INA does have provisions which guard against visa fraud and does not admit aliens who may threaten public safety or national security or who commit fraud to enter the U.S.

## **BACKGROUND**

Religious workers make up the largest number of "special immigrants" for employment-based legal permanent residency applicants. Religious workers are in a separate category from ministers of religion, and are limited to 5,000 immigrants annually. Originally, there was no category that included religious workers. The Immigration Act of 1990 modified the INA to include religious workers as part of the "special immigrants" category. The act also included a "sunset" of this provision on September 30, 1994, which has been extended several times, until most recently, through September 30, 2003. (This same act also created a new nonimmigrant visa for religious workers, known as the R visa, which allows religious workers to be admitted to the U.S. for up to five years.)

There are three classes of religious workers: ministers, professionals working in a religious vocation and other workers in religious vocations. Ministers are people authorized by the religion to conduct worship services and perform other functions. It does not include laypersons who participate in services but are not authorized to perform the duties of a minister. A professional religious position is one for which the minimum requirement is a baccalaureate degree. A religious occupation is one traditionally part of the work of the denomination. This does not include support staff such as clerks or maintenance workers. Typical examples would be missionaries, counselors and liturgical workers. A religious vocation is a calling to the religious life with a demonstrable commitment to that life such as taking vows. Typical in this category would be monks and nuns.

Applicants for LPR status as religious workers must have been working for the religious group for at least two years prior to making the application. This work may be done either in or out of the US. In most cases where the work is done in the US, the person has been in the U.S. on an R visa.

The religious worker must work for a "bona fide, nonprofit, religious organization" or a "bona fide organization, which is affiliated with the religious denomination." A bona fide, nonprofit, religious organization is described in INS regulations as one that would be tax exempt under the Internal Revenue Code. The organization does not need to have ever sought tax-exempt status, but need only prove to the INS that it is eligible for such status. A bona fide organization that is affiliated with a religious denomination is one closely associated with the religious denomination. It must also be eligible for tax-exempt status under the Internal Revenue Code.

A religious denomination is defined as defined as "a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places or religious worship, religious congregations, or comparable indication of a bona fide religious denomination."