

Siskind's Immigration Bulletin
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Published by Greg Siskind, partner at the Immigration Law Offices of Siskind Susser,
Attorneys at Law; telephone: 800-748-3819, 901-737-3194 or 615-345-0225;
facsimile: 800-684-1267, email: gsiskind@visalaw.com, WWW home page:
<http://www.visalaw.com>.

Siskind Susser serves immigration clients throughout the world from its offices in the
US, Canada and the People's Republic of China. To schedule a telephone or in-person
consultation with the firm, go to <http://www.visalaw.com/intake.html>. Editor: Greg
Siskind. Associate Editor: Mick Wright. Contributors: Arda Beskardes, Jamie Naini,
Megan Turngren, Esther Schachter and Maryam Tanhaee.

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1. Openers
2. The ABC's Of Immigration – EB-5 Immigrant Investors
3. Ask Visalaw.com
4. Border News
5. News From The Courts
6. Government Processing Times
7. News Bytes
8. International Roundup
9. Legislative Update
10. Canadian Citizen Deported To Syria
11. Cuban Immigration Facilitated While Travel Restrictions Are Heightened
12. USCIS Comments On Adjustment Of Status Waivers For Asylum Applicants
13. BCIS Says Children Born Out of Wedlock Are Eligible For Derivative Citizenship
14. Feds Accuse Couple Of Running Internet Green Card Scam
15. Immigrant Investor Pilot Program May Receive Extension

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1. Openers

Dear Readers:

A story broke this weekend that reminded me of why I started this law firm nearly a
decade ago. A couple in Florida was arrested for running a scam on the web that

involved green card lottery services. The site, according to US law enforcement authorities, deliberately misled consumers into believing that the site was run by the US government. This is nothing new. Similar scams have been run around the world for about as long as the lottery has been around.

I started participating on USENET newsgroups on the Internet in 1992, before there was much of a commercial world wide web. At that time, the newsgroups were the main way groups of people communicated with each other. At the time, scammers were already posting messages on these groups promising to be able to improve one's chances of winning the lottery and hinting that they were officially sanctioned services of the US government. I advised readers of the newsgroups on immigration law that the lottery was (and still is) a simple process and that people could enter themselves. But beyond that, I posted a detailed question and answer document explaining how the lottery works and how to submit an application without a lawyer or entry service.

The document was a hit and I actually started getting work from people who appreciated my providing the information and who were looking for a lawyer not out to make a quick buck. The success of that posting as well as the good will I developed by answering questions on the Newsgroups gave me the idea to create a web site and online newsletter. The web site would allow me to more easily get information out to a lot of people. My theory was that if people saw good, useful information on our site on a regular basis, they would realize a) much of immigration law is very complicated and hiring an attorney is probably a good idea and b) our firm has the expertise in that subject and should be considered when shopping for an immigration law firm.

Fortunately, the model of building a market on the web by providing excellent and useful content has had more success than getting customers through deception. Sure there are always going to be crooks out there. But for every crook, there are many, many more honest businesses out there that are helping the public. While there are bad apples like the case mentioned above, consumers are much better off today than they were before the Internet. Before there were sites like Visalaw.com and ILW.com (and out hats off to our friendly competitors at Shusterman.com, Murthy.com and USVisalaw.com as well as other law firms who produce excellent sites), consumers were really at a loss to get information. Longtime readers of this newsletter will remember when you had to go to great lengths to find out about US immigration laws. Today, good information is at our fingertips.

Aside from the lottery scam story, we report on the rest of the week's news as well. One involves the odd case of a Canadian citizen who found himself deported by US immigration authorities to his native Syria. The case is disturbing not just because of the injustice shown to the particular person, but also for the lack of respect the US government has shown to Canada, one of our closest allies. Finally, in a sign of the times, the number of cases in the process of appeal has soared dramatically. The most basic reason for this is the fact that more and more applications are being denied. Most immigration lawyers will tell you that while Congress has not changed most substantive laws on immigration since 9/11, the government has been interpreting the existing laws in a tougher and tougher manner.

Finally, as always, we remind readers that we're lawyers who make our living representing immigration clients. We would love to discuss becoming your law firm.

Just go to <http://www.visalaw.com/intake.html> to request an appointment or call us at 800-748-3819 or 901-682-6455.

Regards,

Greg Siskind

2. The ABC's Of Immigration – EB-5 Immigrant Investors

In the next few weeks, Congress is expected to pass legislation calling for the continuation of the Immigrant Investor Pilot Program, a part of the EB-5 category of immigrant investors. Later in this article, you can find more information on that bill. We also thought running an ABCs article on EB-5 visas this week would be appropriate as well.

Congress created the EB-5 immigrant investor visa category in the Immigration Act of 1990 in the hopes of attracting foreign capital to the US and creating jobs for American workers in the process. There are 10,000 visas available in the category each year, 5,000 of which are reserved for people who participate in a pilot program designed to target low employment areas. There are three basic requirements for an EB-5 visa:

- First, the alien must establish a business or invest in an existing business that was created or restructured after November 19, 1990
- Second, the alien must have invested \$1 million (\$500,000 in some cases) in the business
- Third, the business must create full-time employment for at least 10 US workers

Since its creation, the INS created the category very harshly, taking a series of actions that have severely limited its use. For example, in 1998 the INS General Counsel issued a highly restrictive interpretation regarding the validity of certain types of programs commonly used to set up the required business enterprises (SSHD covered this in our April 1998 newsletter:

<http://www.visalaw.com/98apr/23apr98.html>). Second, the INS has launched a series of investigations against companies that assist people in setting up their investments (covered in January 1999:

<http://www.visalaw.com/99jan/35jan99.html>). Lawsuits were filed to attempt to force the INS into reversing its position, but they did not succeed (covered in February 2000: <http://www.visalaw.com/00feb3/10feb300.html>). Congress stepped in, however, and in 2002 it ordered the INS to reconsider its decision.

Establishing or Expanding a Business

An EB-5 investor must create or expand a business by making the required investment and creating ten new jobs. There are three ways of meeting the requirement a qualifying business:

1. the creation of an original business;
2. the purchase of an existing business with simultaneous restructuring or reorganization such that a new commercial organization results; or
3. expansion of an existing business created after November 1990 through the investment of the required amount and the creation of ten new jobs.

Any for-profit entity formed for the ongoing conduct of lawful business may serve as a commercial enterprise, including sole proprietorships, partnerships, holding companies, joint ventures, corporations, business trusts, etc. A holding company with its subsidiaries would also qualify if each subsidiary is engaged in the active conduct of business. Noncommercial activities, such as home ownership, do not qualify. Also, the alien must be actively involved in the business, and cannot be a passive investor.

Investment

The investment can be in the form of cash, equipment, inventory, other tangible property, cash equivalents and indebtedness secured by assets owned by the alien provided that he or she is personally and primarily liable and the assets of the new commercial enterprise are not used to secure any of the indebtedness. The definition specifically excludes capital acquired by unlawful means.

The basic investment amount is \$1 million. The required investment is \$500,000 for a business established in a "targeted employment area." Targeted employment areas include:

1. rural areas, defined as any area other than one within a metropolitan statistical area or within the boundary of a city or town with a population of 20,000 or more; and
2. areas having an unemployment rate that is at least 150% of the national average.

Each state notifies the INS of the qualifying areas within the state. The current regulations set the required investment for a targeted employment area at \$500,000.00.

Aliens can invest the required amount alone, create the qualifying business with another immigrant investor, or even create the business with US citizens or other people not seeking classification as an immigrant investor. In such cases, each person seeking classification as an immigrant investor must have invested the required amount, but each person can use the same employees to reach the required 10 new positions.

Job Creation

The investment must create at least 10 full-time jobs for US citizens, lawful permanent residents or other immigrants lawfully authorized to be employed in the United States. Full-time employees are defined to include workers working at least thirty-five hours per week. This includes conditional residents, temporary residents, asylees, refugees, and recipients of suspension of deportation, but does not include nonimmigrants. In calculating the required number of employment positions, the investor may not include spouses or children, but may include other family members who are employed by the business.

The 10 positions must be full time. This means employment of a qualified employee in a position that requires a minimum of 35 working hours per week. Although two employees may share a full-time position, part-time employment is specifically excluded. Therefore, a combination of two or more part-time positions will not qualify, even if they collectively meet the 35-hour per week requirement.

Immigrant Investor Pilot Program

As a result of a disappointing response to the basic immigrant investor program, Congress enacted a five-year immigrant investor pilot program, which commenced on October 1, 1993. Originally there were only 300 visas available for the pilot program, but it was recently increased to 5000.

The requirements of the pilot program are essentially the same as in the basic investor program, with certain exceptions. In order to qualify under the pilot program, an investment of at least \$500,000 must be made in a commercial enterprise located within an approved "regional center," defined by the regulations as "any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation and increased domestic capital investment."

The immigrant investor pilot program expired on September 30, 2003. However, the Immigrant Investor Pilot Program may receive another five year extension after a bill to extend the program was passed by the Senate unanimously on October 3, 2003. The bill, S. 1642, will extend the duration of the immigrant investor regional center pilot program for five years. It was referred to the House on October 7, 2003

The bill that passed in the Senate also included a requirement for a GAO report in one year after the enactment of the bill. The General Accounting Office will provide information concerning the number of immigrant investors that have received visas under the program, the country of origin of the investors, the localities where these immigrants are settling, the number of investors that have sought to become U.S. citizens, the types of commercial enterprises the investors are involved in, and the type and number of jobs created.

Conditional Permanent Residence

In order to deter fraud, immigrant investors, their spouses and dependent children are subject to conditional permanent residence for a two-year period. The alien must file a petition to remove the conditions during a 90-day period prior to the second anniversary of the alien's lawful admission as a permanent resident. The INS will examine the business at the end of the two-year period to determine whether or not the alien has complied with all of the requirements.

When the immigrant investor application is submitted to the INS, it must include the following:

- Evidence to show that a new commercial enterprise has been established, such as articles of incorporation, business license, or evidence of the transfer of the required amount of capital when purchasing an existing business.
- Evidence that the proper amount of capital has been placed at risk, such as bank statements showing the deposit of funds into the business's account,

evidence of equipment purchased for use in the business; evidence of property transferred to the business, and evidence of money transferred to the business in exchange for shares of stock. This stock cannot include terms requiring the business to redeem the stock at the holder's request.

- Evidence demonstrating that the capital invested was lawfully gained, such as foreign business registrations, tax returns, or certified copies of criminal or civil judgments, where appropriate.
- Evidence that the investment has created at least ten full-time jobs, such as tax records, Forms I-9, or if employees have not yet been hired, a detailed business plan demonstrating that the nature of the business will require the hiring of ten employees within two years. If the business is a troubled business, the applicant must submit evidence that the currently existing number of employees will be maintained for at least two years.
- Evidence that the investor will be engaged in the management of the enterprise, such as evidence that the applicant is a corporate officer or member of the board of directors. If the business is a limited partnership, the applicant will be considered to have a management position only if the partnership agreement provides that the applicant will have the rights, powers and duties normally granted to limited partners under the Uniform Limited Partnership Act.

If the application is granted, the alien is given conditional permanent residence and after two years is eligible to file for removal of the conditions. The alien must also show that he or she "sustained the actions required for removal of the conditions" during his or her residence in the United States. An alien entrepreneur will have met this requirement if he or she has "substantially met" the capital investment requirement and has continuously maintained this investment during the conditional residence period. The entrepreneur's residence may be terminated at the end of the two-year period or earlier if it is found that the business was not established, or was established solely to evade immigration laws or that the requirements were otherwise violated. If, in the application to removed conditions, the alien demonstrates that the business was established, that the required amount of capital was invested, and that 10 full-time jobs either have been or will be created, the conditions will be removed and the alien granted full permanent residence.

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 - I just won the DV lottery and will be issued the green card soon. Also, at the same time am getting the immigrant visa for Canada. Please can you tell me how can I manage to keep both visas without losing the other. I understand that the Green Card lottery visa can be used for the later years. Is this true? How is that?

A - It is not true that you can use your lottery-based green card win in later years. You must get it during the fiscal year for which you were selected. As for maintaining permanent residency in the US and Canada, it is possible as far as US immigration laws are concerned. But you must show that you intend to maintain permanent residency in the US. That means maintaining significant ties to the US. They would include maintaining financial ties, family ties, work ties, a residency in the US, paying your taxes as a resident, etc. You may find the article on our web site at <http://www.visalaw.com/01jan4/12jan401.html> helpful.

Q - I have a quick question--I have read your detailed web page but didn't see information related to how many hours have to be worked at a job to qualify for a TN visa. I am a Canadian citizen with a master's degree looking to apply for some community college teaching positions, but many of them are "adjunct", i.e., not full time positions. Does that matter?

A - There is no full time work requirement for a TN visa. You still will have to explain how you will survive financially, however, and if the job is so part-time that you will earn only a small sum, then you could have issues.

Q - Can a student on F-1 visa form his own LLC and work as a CEO?

A - Any person can form a company. Visa status is not relevant as long as that person is only investing in the company. If the person wants to run the company or be working for his company then that is a different story. Because of the employment limitations on the F-1 visa, an F-1 student cannot do it. However, if the purpose of the business falls within the student's field of study (computer science student starting a software company, etc.), then the student may be able to start and run the company on his OPT after his graduation.

Q - I came to the USA in 1998 as an F-1 undergraduate student. Right before the last semester in August 2002 I had a family emergency due to which I wasn't able to continue my school for 2 semesters. In the summer of 2003 I received my degree. Since I had only 1 semester left, my international center said not to worry about reinstating. Now 2 weeks ago I got a job and my company has started my H1 process. Is it going to be difficult for me to get H1? What would be the next step? I did work for 2 weeks in November 2002 when I was not going to school because I had Curricular Practical Training. But then I haven't even worked. Could anyone please tell me what is the result going to be about my H1 application?

A - It will probably be possible for you to get an H-1b, but you will probably have to travel outside the US to get it. Because you had status violations, you are not eligible to obtain a change of immigration status in the US. But because you were admitted to the US for the duration of your status (D/S) as indicated on your I-94, you are not subject to entry bars to the US, etc. Therefore, it will probably be possible to process an H-1b for you through consular processing. In consular processing, your employer completes all the necessary steps for your H-1b application in the US and then you obtain your H-1b visa from a US Consulate

abroad. Note that a consular officer could exercise his or her discretion in denying a visa because they may question whether you are likely to comply with the terms of your visa given your recent history.

Q - I have a friend in South Korea who would very much like to visit this country and I would really like to help her. She works as a sales girl selling clothes. All of her family is in South Korea. Her parents are farmers and she is not wealthy. I have been trying to find a way to make it possible for her and have come up with a dead end. Unfortunately she is not rich and neither am I.

I feel it is very unfair that it takes a lot of money to be able to visit this country. I have a place for her to stay and would be responsible for her while she is here.

A - Unfortunately, young single women from developing countries often have problems getting visitor visas because of high overstay rates. That's why the consulates will look at things like money, education, career ties, etc. Your friend can do a few things to improve her chances. She can get an affidavit of support from you. She can document that all her close relatives are in Korea. She can arrange for a short trip - just a couple of weeks - rather than asking for several months. She can get a letter from you indicating that you will host her during her short trip. She can get a roundtrip plane ticket consistent with the visa time requested. She can get a letter from her employer giving her vacation time to go to the US. These may not be enough, but they will probably help.

Q - I have an H1b visa. Recently I was offered a part time job. Will my current visa allow me to work at the second company without doing anything else or do I need another H1b visa? In case I need a second visa, will this one be linked to the first one? What happens if my full time job is terminated?

A - You need a separate concurrent H-1B visa if you wish to take on additional work. The second visa is independent of the first and if the first job is terminated, you would still be legally here and allowed to work for the second employer.

4. Border News

Tuesday night, the Border Patrol's Laredo Sector released 64 illegal immigrants after the United States Border Patrol ordered the agency to free them for lack of available space. Most of the illegal immigrants are Central and Latin Americans that have been detained during the past few days for entering the U.S. illegally.

Illegal immigrants are typically held in custody until their deportation hearings. In this case, the released immigrants will be notified of their court dates, which in many cases could be up to three years away.

The release of these illegal immigrants raises several issues for both the local area and the Border Patrol.

One concern voiced by Oscar Garza, the assistant chief patrol agent for the Border Patrol's Laredo Sector is that once the immigrants are released, they will not return for their court hearings. "They'll be given a time and a place to show (up in court), but I guarantee that is not going to happen. They are going to go wherever they want to go," Garza told the San Antonio Express-News.

Another concern is one of public policy and whether the release may cause an increase in the number of other potential illegal immigrants into the area. According to Garza, "We don't like to let them go because they stay in the community. The reason we don't like to do it, once the word gets out, there might be an influx of people coming." The mayor of Laredo also criticized the release, calling it the "legal illegal transport of people."

The Laredo Sector may be forced to release another 34 immigrants momentarily as proper bed space is still not available in the area's detention centers.

This week, the Department of Homeland Security began test flights of drones at Fort Huachuca and Gila Bend, according to the Arizona Daily Star. The Department anticipates that these drones will help in maintaining border control along the U.S.-Mexico border.

The Defense Department currently uses drones to fly over war zones. Aerial drones can fly up to 40-50 hours at a time, and because they can fly at very high altitudes, they are virtually noise-free.

The Department is still in the planning stage and has yet to finalize any plans. According to Dennis Murphy, a department spokesman, the Department would need to first obtain the Federal Aviation Administration's (FAA) approval. After approval is granted, the Department would still need to have the drones customized for the Department of Homeland Security.

A simple model drone, without extra features such as cameras and sensors, could cost the Department anywhere between \$1.5 million and \$4 million.

5. News From The Courts

Osigwe v. Ashcroft

In this case from the Fifth Circuit Court of Appeals, a Nigerian couple, Ngozi and Chibundu Osigwe, appealed from a Board of Immigration Appeals ("BIA") summary decision. The decision by BIA denied their application for asylum, withholding of removal, and protection under the Convention Against Torture. The Osigwes claimed that their minor daughter, who is a United States citizen by birth, will be compelled to undergo female genital mutilation ("FGM") if they are returned to Nigeria.

The Fifth Circuit held that the Osigwes are not eligible for asylum under the general asylum provisions based solely on their daughter's risk of being subject to FGM if returned to Nigeria. However, the family may be eligible for a "humanitarian grant of asylum." The court held that because the Osigwes have exhausted their

administrative remedies with respect to this claim, the case must be remanded to the BIA to determine whether the Osigwes situation warrants a grant of humanitarian asylum and withholding of removal. The court granted the Osigwes petition with respect to the claims of humanitarian asylum and the withholding of removal claims.

However, the court held that although the United States citizen child of the family would be subject to the risk of FGM if she was returned to Nigeria, the Osigwes do not fall within the parameters of the Convention Against Torture Act, based on the fact that there was a risk of FGM for their daughter. Therefore, the court denied the petition for review with respect to the claim for protection under the Convention Against Torture. Thus, the case was remanded to the BIA so that the claims of humanitarian asylum and withholding of removal, based on the severity of Osigwe's past persecution could be addressed.

Uritsky v. Ridge

This case from the United States District Court for the Eastern District of Michigan, Southern Division, involved the grant of a writ of habeas corpus. The petitioner alleged that he was being unlawfully detained by the United States Department of Homeland Security ("DHS") in violation of his Fourth and Fifth Amendment rights. Petitioner sought a preliminary injunction to prevent DHS from continuing to detain him pending the resolution of removal proceedings against him.

Petitioner, Alexander Grigorievich Uritsky, is a native of Ukraine and citizen of Israel. He became a lawful permanent resident of the United States in 2002. In September of 2002 he pled guilty to Third Degree Criminal Sexual Conduct in a state court in Michigan. But the court did not enter a judgment of conviction. He was sentenced to two years of probation. In October of 2002 the government issued a notice of removal proceedings against him based on his guilty plea. Under the Immigration and Nationality Act ("INA"), an alien is subject to deportation any time after admission upon conviction of an "aggravated felony." Sexual abuse of a minor is an aggravated felony under the INA. Thus, petitioner was immediately detained and held without bond.

In his motion, the petitioner argued that he had never been "convicted" of an aggravated felony. In April of 2003 the Immigration Judge terminated the government's removal proceedings against the petitioner, finding that the assignment of petitioner to Youthful Trainee Status did not constitute a "conviction" for immigration purposes.

Although recognizing that aliens are entitled to Fifth Amendment due process protection in deportation proceedings, the Supreme Court has held that detention during removal proceedings is a constitutionally valid aspect of the deportation process. But in this case, the period of time that the petitioner was held in custody was much longer than the 90 day period of detention pending a determination of removability, which the Supreme Court assumed was typical. The petitioner's almost twelve months of detention was also longer than the six month presumptively reasonable period of post-removal detention set forth by the Supreme Court by case law in the Zadvydas case. In the Immigration Court, petitioner contested his removability claiming that he has never been "convicted" of an aggravated felony.

The termination of his removal proceedings by the Immigration Judge on this basis, therefore, suggested that there is a significant likelihood that petitioner in fact was not subject to removal.

Under these circumstances, the court held that under the Fifth Amendment, petitioner is entitled to an individualized determination that his detention is necessary to further a sufficiently compelling governmental need. Because the Immigration Court already found that petitioner's continued detention is not justified by such a need, the individualized determination requirement was found to have been met. Thus, the court held that clear and convincing evidence would be required to show that if released the petitioner would pose a danger to the safety of other persons or of property and is likely not to appear for any scheduled proceeding if the petitioner is to be held. This standard was not met, and therefore the petitioner was ordered to be released immediately.

6. Government Processing Times

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

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

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

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

7. News Bytes

USCIS has changed jurisdictional lines in Mississippi for the service areas covered by the Memphis district office and the New Orleans district office. The long-standing guideline of "North of Highway 8", for filings to Memphis, and "South of Highway 8", for filings to New Orleans, has been changed to "North of Highway 82" for Memphis filings, and "South of Highway 82" for New Orleans filings. Residents of Mississippi cities traversed by Highway 82, including Greenville, Indianola, Greenwood, Winona, Starkville and Columbus will now file their applications in Memphis instead of New Orleans.

Over fifty percent of employees at the T.J. Maxx distribution center in northeastern Pennsylvania were found by federal immigration agents to be ineligible to work and were ordered to be terminated. A spokesman for TJX Companies Inc., which runs the T.J. Maxx chain, said that the distribution center advertised in local papers, held job fairs and posted notices to try to hire locally. A large number of respondents for the jobs presented T.J. Maxx with false documentation and were ineligible to work. Many of these 274 ineligible employees have resigned or been fired. T.J. Maxx stated that the remaining employees were being interviewed and would be fired if necessary.

Within the next three months, all new family-based filings that are sent to the USCIS local offices will be forwarded to the National Benefits Center (NBC, formerly the Missouri Service Center) for intake and initial processing, including processing of employment authorization documents (EADs) and advanced paroles, according to the American Immigration Lawyers Association (AILA). USCIS said the adjustment applications will be returned to the local offices for interviews after initial processing. Applications should be filed at the local offices, at least until a Federal Register notice is published requiring that applications be mailed directly to the NBC.

Department of Homeland Security Operations sent a memorandum to the Vermont Service Center on October 8, authorizing them to adjudicate U interim relief applications, effective immediately. DHS indicated there might be a slight delay in adjudications as the VSC works out kinks in the new system. The VSC is now the centralized "clearinghouse" for all U interim relief applications. All applicants, service centers and field offices should send or forward applications to the VAWA Unit, Box 1000 at VSC. Applications must include a law enforcement certification form. VSC will be able to grant deferred action in cases where the applicant is clearly ineligible or is an aggravated felony.

AILA reports that section 212(d)(3)(A) waivers in Canada have been halted due to recent reorganization of INS/DHS, and that fingerprint-based police certificates may soon be required. The problem is that the legacy INS offices that used to process the subsection "A" Waivers have been reorganized without providing a replacement, and as a consequence, no "A" Waivers are currently being processed from consulates in Canada.

The California Service Center has told AILA that an upgrade to the USCIS computer system resulted in errors relating to the number of days it takes to process applications, petitions, motions and appeals on all receipt notices issued by service centers on October 6 and 7. According to AILA, "the error also caused the NCSC call-in automated system and the CIS online system to incorrectly report processing dates." The errors were nation-wide, and not limited to the CSC.

The American Bar Association is calling on the Justice Department and the Board Of Immigration Appeals to discard procedures it adopted last year, or to make a series of changes in order to "unclog federal court dockets." The ABA did a study of the BIA's procedural changes and found that they were having a "serious and sweeping effect on the administration of justice." According to the study, just 1 in 10 appeals are granted now, while 1 in 4 were granted before the changes, and BIA decisions are being appealed to federal courts at a rate three times higher than in 2001. In a media release issued today, the ABA recommended a few modifications if the BIA does not discard the 2002 procedural changes, including the following: require that each case have a written decision detailing specifics about the case and how it was decided; prohibit single-member review for reversing an order of an immigration

judge to terminate proceedings or grant relief to a non-citizen; allow de novo review; and expand board membership.

From March 2002 to March 2003, there were 8,446 immigration administrative agency appeals filed in federal court: an increase of 379% from the previous year. This increase was caused by Attorney General John Ashcroft's announcement on February 2, 2002 that the Justice Department would reduce the backlog of 56,000 cases filed with the BIA. This led the BIA to double its production and send an overwhelming number of petitions for review to the U.S. courts of appeals.

In March 2002, total administrative agency appeals of BIA decisions increased by 48%, and rose to 73% in April. By February 2003, monthly filings of these appeals grew to 357%, with the Second and Ninth Circuits receiving the largest portion of these appeals. From February 2002 to February 2003, filings in the Second Circuit increased by 781% and filings in the Ninth Circuit increased by 385%.

The Attorney General met its goal and cleared the backlog of cases, and the BIA's monthly production has risen by 30%. The most recent data shows that from the period from June 2002 to June 2003, there were 8,794 immigration administrative agency appeals filed.

The Department of State has launched a Web page for electronic visa application forms and has posted first form that can be submitted to the Department electronically. The Website, <http://evisaforms.state.gov>, links to an electronic version of the DS-156 form. The Department apparently gave no notice that this system was in process, let alone available for use, until the U.S. Consulate in Osaka, Japan, alerted a member of AILA to the change.

8. International Roundup

Italy is pushing a plan to set Europe-wide quotas for legal immigration from African and Asian countries, if those countries agree to take back illegal immigrants. Italy currently holds the European Union's rotating presidency and believes that offering legal immigration quotas will make deportation of illegal immigrants easier.

European leaders will consider the plan this week during a meeting in Brussels. The plan is opposed by Germany, while Britain remains undecided. At present, all member countries have a veto on immigration policy. Under a new constitution, which is currently being negotiated, immigration would be decided by qualified majority voting. That would mean that member states could be forced to accept the quotas even if they individually decide to oppose them.

Today Australia announced a major new package of measures to combat people trafficking, including powers to use wiretaps and new visa arrangements for "potentially trafficked persons."

More than 20 million dollars (13.8 million US dollars) would be put into the project over four years, the government said in a joint statement by several ministries.

Among the measures is the creation of a new "mobile strike team" within the Australian Federal Police to investigate trafficking, and a new migration officer will be based in Thailand, concentrating on trafficking in people.

There plan also calls for new visa arrangements and closer links between police and the Department of Immigration and Multicultural and Indigenous Affairs, which oversees visas.

Airport officials in Paris said they have found the body of an immigrant from Congo who apparently froze to death while trying to reach the country in the undercarriage of an Air France plane. Congolese officials said the man snuck under the plane before it took off from the central African country, and emergency medics could do nothing to revive him. The man, whose identity and age is unknown, would have either frozen to death at temperatures that fall below minus 50 degrees Celsius or suffocated from lack of oxygen, an official told the Agence France Press. The body was taken to a Paris medical institute for an autopsy.

9. Legislative Update

Aides of Orrin G. Hatch, the Utah Republican who chairs the Senate Judiciary Committee, tell the New York Times they expect the committee to approve a bill this week that would grant legal status to high school students or graduates who are illegal immigrants. The Development, Relief and Education for Alien Minors (or DREAM) Act is sponsored by Hatch and 35 others, a third of them Republicans.

Other immigration legislation gathering bipartisan momentum includes a bill granting accelerated citizenship to immigrants who serve in the armed forces and another that grants legal status to agricultural workers if they commit themselves to doing farm work for a set period of time. The bills are said to have the support of Senate leaders, conservatives, liberals, agricultural employers, the Chamber of Commerce, and two of the nation's largest unions.

Responding to a question about where the President stands on the H-1B visa program, currently "under attack in Congress," White House Press Secretary Scott McClellan said, "the President continues to believe what he said previously, that we should be a welcoming society. Obviously, September 11th came, and there is a need to strengthen our border security and take some additional steps there. But we also – as we do that, we want to continue to be a welcoming society. We are a nation of immigrants, and the President's position remains the same on that issue."

Executive order 41, signed by New York City Mayor Michael Bloomberg, amends the rules governing the release and sharing of "confidential information," which includes immigration status. Under the order, a city officer or employee, other than law enforcement officers, "shall not inquire about a person's immigration status unless: 1. such person's immigration status is necessary for the determination of program, service or benefit eligibility or the provision of City services; or 2. such officer or employee is required by law to inquire about such person's immigration status." Section 4, dealing with law enforcement officers, states that "a. officers shall not enquire about a person's immigration status unless investigating illegal activity other than mere status as an undocumented alien. b. Police officers and peace officers, including members of the Police Department and the Department of Correction, shall continue to cooperate with federal authorities in investigating and apprehending aliens suspected of criminal activity. c. it shall be the policy of the Police Department not to inquire about the immigration status of crime victims, witnesses, or others who call or approach the police seeking assistance."

The following bills were recently introduced in Congress:

[H.R.3237](#)

Title: To improve the National Instant Criminal Background Check System, and for other purposes.

Sponsor: Rep McCarthy, Carolyn [NY-4] (introduced 10/2/2003)

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

[H.R.3271](#)

Title: To amend the Immigration and Nationality Act to provide for permanent resident status for certain long-term resident workers and college-bound students, to modify the worldwide level of family-sponsored immigrants in order to promote family unification, and for other purposes.

Sponsor: Rep Gephardt, Richard A. [MO-3] (introduced 10/8/2003)

Latest Major Action: 10/8/2003 Referred to House committee. Status: Referred to the House Committee on the Judiciary.

[S.1706](#)

Title: A bill to improve the National Instant Criminal Background Check System, and for other purposes.

Sponsor: Sen Schumer, Charles E. [NY] (introduced 10/2/2003)

Latest Major Action: 10/2/2003 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. Canadian Citizen Deported To Syria

Maher Arar is a Canadian citizen who has spent over a year in a Syrian prison. This happened because the U.S. immigration officials suspected that he was a terrorist, when he was traveling on a Canadian passport in September of 2002. He had

departed Tunis, where he was vacationing with his family, traveling on a Canadian passport. While on a flight to Montreal, Canada, he was detained by the U.S. Immigration and Naturalization Service, while on a stopover in New York. He was deported to Syria on October 7 from New York. The Canadian government was not contacted about Mr. Arar's case until after he had been deported.

Mr. Arar was held in detention by the U.S. Immigration and Naturalization Service with only limited access to counsel. He was deported in a hearing where he had no legal representation. He did not have a Syrian passport, was traveling on a Canadian passport and is a Canadian citizen. But the U.S. Government claimed to have deported him to the country where he was born. This was despite the fact that a few weeks later, in November of 2002, the U.S. Government announced a suspension of the requirement of fingerprinting and photographing of Canadian citizens traveling on Canadian passports, even if they were born in one of a series of listed countries, connected to terrorism.

Maher Arar came to the United States in late 1980s. Mr. Arar has a bachelor's degree in computer engineering from McGill University and a master's degree from INRS Telecommunications in Montreal, Canada. He was employed in Ottawa as a telecommunications engineer. He has two young children, and his wife has a PhD in mathematics from McGill University. At present, representations are being made internationally in order to successfully secure the release of Maher Arar to Canada as soon as possible.

11. Cuban Immigration Facilitated While Travel Restrictions Are Heightened

A press release issued by the Department Of Homeland Security (DHS) on October 10th declared that travel restrictions to Cuba will be heightened, enforcement to end illegal travel and transport of goods and funds to Cuba will increase, and the DHS will expand programs that promote safe and legal migration from Cuba. U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) will increase the inspection of all travelers going to or coming from Cuba. Also, USCIS will aid the Department of State in processing the immigration of eligible Cubans for the "in-country refugee" program and the "Special Cuban Migration" program.

Also on October 10th, President Bush announced his plans to encourage a "free, democratic Cuba." As part of those plans, the U.S. will increase the number of Cuban immigrants allowed into the U.S. each year and will increase restrictions for Americans traveling to Cuba. The U.S. will launch a campaign to help fleeing Cubans legally enter the U.S.

The President said he believes these initiatives will help Cuba become more democratic. By informing Cubans of the "routes to safe and legal entry" into the U.S., the Administration believes that those desperate to flee Cuba will not try to sail to the U.S. in unsafe and unstable boats. Also, by heightening restrictions on travel to and from Cuba, the U.S. will impede those travelers who go around the travel restrictions and "perpetuate the misery of the Cuban people" through their illegal tourism.

President Bush also presented the formation of a commission to plan for change, which will be headed by Secretary of State Colin Powell and the Cuban-born Secretary of Housing and Urban Development Mel Martinez. This new commission will utilize government experts "to plan for Cuba's transition from Stalinist rule to a free and open society."

Some political observers believe that the goal of this announcement, aside from helping Cuba, is to help the President win the votes of Miami's Cuban-American community, which could be crucial in the 2004 election. The President's support in Miami decreased in July after Washington returned fifteen migrants to Cuba after being assured by the Cuban government that they would not be executed for hijacking a government-owned boat.

12. USCIS Comments On Adjustment Of Status Waivers For Asylum Applicants

USCIS has responded to questions posed by members of the American Immigration Lawyers Association concerning a recent rash of requests for waiver applications by asylee applicants for adjustment of status. Siskind Susser attorneys were contacted by no fewer than ten individuals in different parts of the country who received such requests. Referring to recent reports that applicants for asylee adjustments have been required to fill out I-602 waiver applications for entering the U.S. on false documents, AILA asked why the agency is suddenly requiring waivers of people who are excused from having to go to such measures in order to protect themselves from persecution.

AILA recorded the USCIS response as follows:

"An asylee applying for adjustment of status to that of lawful permanent resident pursuant to Section 209(b) of the Act must be admissible as an immigrant to the US. However, 212(a)(4) public charge, 212(a)(5) labor certification and 212(a)(7)(A) no valid documents are not applicable to asylees seeking adjustment. With the exception of certain inadmissibility grounds related to crimes or national security, most other grounds may be waived for humanitarian purposes, to ensure family unity, or when it is otherwise in the public interest.

"In the case of asylees, however, CIS issued guidance in July 2003, stating that it is not necessary to require the submission of the Form I-602 in those cases involving inadmissibility grounds that appear related to the asylee's manner of entry or unlawful presence because the alien has received protection in the United States. While the subsequent grant of asylum does not 'cancel out' the inadmissibility ground, it does provide sufficient basis for determining that a waiver is warranted on humanitarian grounds in those cases where the applicant was fleeing persecution as demonstrated by an asylum grant.

"When an adjudicator determines that an asylee requires a waiver of inadmissibility prior to adjustment of status, the adjudicator may grant the waiver without requiring submission of the Form I-602 if: The applicant is inadmissible under 212(a)(6)(A)(i) or 212(a)(9)(B); CIS records and other information in the alien file contain sufficient information to assess fully the eligibility for a waiver; There is no evidence in CIS records to suggest that other adverse factors would affect the discretionary determination; and It is appropriate to grant a waiver as described above.

"If evidence does not support a discretionary approval of a waiver, the officer may request that the applicant provide additional information in support of a waiver of inadmissibility. At the time of this request, Form I-602 can be requested if it is not present in the record."

13. BCIS Says Children Born Out of Wedlock Are Eligible For Derivative Citizenship

In a memorandum dated September 26, 2003, which was issued to BCIS directors, BCIS updated its policy regarding children born out of wedlock who have not been legitimized.

Questions have arisen regarding whether a child in this case can receive citizenship automatically under INA § 320 or 322 through the naturalization of his or her mother. While previously, children born out of wedlock were eligible for citizenship through Section 321 of the Act, this section was repealed and the Child Citizenship Act (CCA) has no provision for these children.

INS requested an opinion from the Office of Legal Counsel (OLC) in the Department of Justice regarding whether a child born out of wedlock who has not been legitimated may derive citizenship under the CCA. On July 24, 2003, the OLC stated that in this type of case, the child could derive citizenship through the naturalizing mother under the CCA.

The memorandum stated: "Assuming an alien child meets all other requirements of Section 320 and 322 [of INA], an alien child who was born out of wedlock and has not been legitimated is eligible for derivative citizenship when the mother of such a child becomes a naturalized citizen." This policy applies to all cases pending on September 26, as well as cases filed on or after this date.

14. Feds Accuse Couple Of Running Internet Green Card Scam

Authorities have arrested a Fort Lauderdale couple and charged them with conspiring to commit wire and mail fraud in connection to an alleged Internet-based Green Card scam, according to the Sun-Sentinel. A joint investigation by the FBI, the Federal Trade Commission and Postal inspectors was launched after officials received complaints from green-card applicants who said they were tricked into thinking they were dealing directly with the Department of State. John Romano, 29, and Hoda Nofal, 28, are accused of using the Internet to "masquerade as an agency of the United States government." Court records show the two charged up to \$250 in order to apply for the green-card lottery. The couple deposited about \$3.5 million into a bank account and made other purchases, according to court documents.

A court affidavit identifies Romano and Nofal as president and treasurer of a company called Global Web Solutions, operating eight Websites, and doing business under the names, "USA Immigration Services" and "US Immigration Online." Officials said the couple falsely stated that their service would ensure applicants they would

qualify for the Diversity Visa Lottery, a program created by the Immigration Act of 1990 and run by the State Department.

15. Immigrant Investor Pilot Program May Receive Extension

The Immigrant Investor Pilot Program may receive another five-year extension after a bill to extend the program was passed by the Senate unanimously on October 3, 2003. The bill, S. 1642, will extend the duration of the immigrant investor regional center pilot program for five years. It was referred to the House on October 7.

The bill that passed in the Senate also included a requirement for a GAO report in one year after the enactment of the bill. The General Accounting Office will provide information concerning the number of immigrant investors that have received visas under the program, the country of origin of the investors, the localities where these immigrants are settling, the number of investors that have sought to become U.S. citizens, the types of commercial enterprises the investors are involved in, and the type and number of jobs created.

As a result of a disappointing response to the basic immigrant investor EB-5 program, Congress enacted a five-year immigrant investor pilot program, which commenced on October 1, 1993. Originally there were only 300 visas available for the pilot program, but the number has increased dramatically. There are currently 10,000 visas available in the EB-5 category each year, 5,000 of which are reserved for people who participate the pilot program.

The requirements of the pilot program are essentially the same as in the basic investor program, with certain exceptions. In order to qualify under the pilot program, an investment of at least \$500,000 must be made in a commercial enterprise located within an approved "regional center," defined by the regulations as "any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment." The Bureau of Citizenship and Immigration Services designates the regional centers, targeting low employment areas in an effort to bring economic growth to the region.